

previous bulletin that have been modified as appropriate, renumbered, and reorganized. Other new drawings were added to exhibit one or more of the following:

- (a) The application of post-type insulators;
- (b) Construction guides and design details;
- (c) New equipment and new design; and
- (d) Details of subassembly units.

A few new drawings were added to replace, with modifications as required, needed drawings or assemblies that were deleted from the previous bulletin for the reasons previously given.

Comments

On August 26, 1997, RUS published a proposed rule in the **Federal Register**, Vol. 62, No. 165. Comments were received from two parties.

The first party, a distribution borrower of RUS, made three comments. The first comment pointed out a minor technical error on one of the drawings that RUS subsequently corrected. The second comment pointed out the absence of platforms for large transformer banks which is not a RUS standard and has not been a standard for over 30 years. The final comment regarded a preference size of conduit on a service entrance drawing. Since this third comment refers to a guide drawing and not a RUS specification, no changes are necessary to accommodate the preference of the commenter.

The second set of approximately 30 comments was received from a consulting engineering firm. Four comments were general in nature regarding the National Electrical Safety Code, the size of the openings on clevises, crossarm loading and grounding assemblies. No response for the above comments were called for nor needed.

The commenter pointed out minor technical, drafting, or typographical errors or improvements on several drawings. As a result of these comments the following 21 drawings were corrected:

VA4.1	VD2.91L	E3.1
VB4.1	VD4.1	E4.1L
VC1.41L	VD4.1L	F1.XX
VC2.52L	E1.1	F2.XX
VC4.1	E1.01	F3.XX
VC4.2L	E2.1	F6.6
VC5.11G	E2.3G	VQ.41

Based on the comments given, drawing M2.1G was eliminated.

This commenter suggested the addition of notes on several drawings, where relevant, regarding maximum transverse loading for conductors,

clearances from poles of conductors on swing angles, separation of conductors on double-circuit assemblies, helix sizes, torques and depths on anchor drawings, right-of-way clearing details, and lead lengths on surge arresters. The commenter also suggested the addition of logs anchors, elimination of rock anchors, replacement of swamp anchors, and minor design changes on certain oil circuit recloser, auto-transformer and switch drawings. Each of the above comments was thoroughly reviewed and considered. RUS determined that each of the suggestions immediately above, which describe the commenter's construction preferences on some assembly units, are technically correct. Likewise, the RUS version of the assemblies is technically sound. In the interest of staying consistent with previous RUS standard assembly units, RUS did not change any of these drawings as suggested.

The commenter also suggested that drawing VD6.91 was technically wrong, that "silts" should be eliminated from some soil classifications in Table F, and that the ground connections on two of the transformer/meter connection schematics was incorrect. RUS reviewed these comments very carefully and determined that the RUS drawings are correct and that the comments were incorrect. Thus, no changes were made to these drawings.

List of Subjects in 7 CFR Part 1728

Electric power, Incorporation by reference, Loan programs-energy, Rural areas.

For reasons set out in the preamble, RUS is amending 7 CFR part 1728 as follows:

PART 1728—ELECTRIC STANDARDS AND SPECIFICATIONS FOR MATERIALS AND CONSTRUCTION

1. The authority citation for part 1728 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 1921 *et seq.*; 6941 *et seq.*

2. Section 1728.97(b) is amended by removing the entry for Bulletin 50-5 and adding to the list of bulletins, in numerical order, the entry for Bulletin 1728F-803, to read as follows:

§ 1728.97 Incorporation by reference of electric standards and specifications.

* * * * *

(b) List of Bulletins.

* * * * *

Bulletin 1728F-803, Specifications and Drawings for 24.9/14.4 kV Line Construction (October 1998).

* * * * *

Dated: December 18, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98-34493 Filed 12-30-98; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 77 and 91

[Docket No. 92-076-2]

RIN 0579-AA53

Tuberculosis in Captive Cervids

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning tuberculosis and the interstate movement of animals by adding provisions regarding testing, identification, and interstate movement of captive cervids, such as deer and elk. We are also amending the regulations concerning exportation of animals and animal products to require that, to be eligible for export, captive cervids be accompanied by a certificate stating that they have tested negative for tuberculosis within 90 days prior to export. Captive cervids have been determined to be a source of tuberculosis infection. These amendments are necessary to help prevent the spread of tuberculosis and facilitate the eradication of tuberculosis in livestock in the United States.

EFFECTIVE DATE: The incorporation by reference of the publication listed in the rule is approved by the Director of the Federal Register February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph VanTiem, 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 is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, and other species, including humans. Bovine 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.

The regulations in 9 CFR part 77 restrict the interstate movement of cattle and bison to help prevent the interstate

spread of bovine tuberculosis. On April 4, 1996, we published in the **Federal Register** (61 FR 14982–14999, Docket No. 92–076–1) a proposal to amend the regulations by dividing 9 CFR part 77 into two subparts: “Subpart A—Cattle and Bison” and a new “Subpart B—Captive Cervids.” As proposed, “Subpart A—Cattle and Bison” contained the regulations currently in part 77 plus a new § 77.7, “Cleaning and disinfection of premises, conveyances, and materials,” regarding the cleaning and disinfection of premises, conveyances, and materials used in the interstate movement of tuberculous cattle or bison. Proposed “Subpart B—Captive Cervids” added provisions concerning testing, identification, and interstate movement of captive cervids to help prevent the interstate spread of tuberculosis and facilitate the eradication of tuberculosis in livestock in the United States.

The regulations in 9 CFR part 91 concern exportation of animals and animal products. We proposed to amend part 91 to require that captive cervids test negative for tuberculosis within 90 days prior to export.

We solicited comments concerning our proposal for 60 days ending June 3, 1996. We received 15 comments by that date. They were from industry associations, veterinarians, wildlife associations, deer and elk producers, a State animal health commission, and other individuals. One comment supported the proposal without change, two comments opposed the proposed rule, and 12 comments, while generally supportive, requested specific changes to the proposed rule. All of the comments concerned the proposed new subpart B to part 77. The comments are discussed below by topic.

Overview of Proposed Regulations

As stated previously, our proposed “Subpart B—Captive Cervids” covered testing, identification, and interstate movement of captive cervids. The purpose of the proposed regulations was to help prevent the interstate spread of tuberculosis and facilitate the eradication of tuberculosis in livestock in the United States.

Generally, we proposed that a captive cervid could not be moved interstate unless it had tested negative to an official tuberculosis test, or was being moved directly to slaughter or to be necropsied. We proposed to require a permit for the interstate movement to slaughter or necropsy. We also proposed procedures for applying and interpreting official tuberculosis tests, procedures for cleaning and disinfecting conveyances and materials used to

move tuberculous captive cervids interstate, and procedures for the quarantine of herds considered to be at high risk for tuberculosis (for example, herds found to contain a captive cervid that responds to an official tuberculosis test, that shows lesions suggestive of tuberculosis at slaughter, that is found to be infected with tuberculosis, or that has been exposed to tuberculosis).

In addition, we proposed to establish a herd accreditation program for captive cervid herds, similar to the one we have for cattle and bison herds. Under that program, participating herd owners would be subject to progressively less restrictive requirements for moving their captive cervids interstate, as long as regular testing of their entire herd at prescribed intervals continued to show no evidence of tuberculosis in the herd. The reduced restrictions were based on the captive cervids coming from a herd with a history of testing negative for tuberculosis. The main purpose of the proposed herd accreditation program was to provide a systematic approach towards eradication of tuberculosis from U.S. captive cervid herds.

In general, we proposed three classes of herds under the herd accreditation program. We explained in the proposed rule that participation in the program would be voluntary. However, interstate movement would be easier for an animal from a participating herd. A captive cervid could be moved interstate from a non-participating (unclassified) herd, or a herd that had not yet achieved classification under the program, only if: (1) The captive cervid had tested negative to two official tuberculosis tests conducted no less than 90 days apart; (2) the second test was conducted within 90 days prior to the date of movement; and (3) the captive cervid was isolated from all other animals during the testing period (from the time of the first test to interstate movement).

The three classes of herds we proposed were accredited, qualified, and monitored herds. Accredited herd classification indicated the greatest assurance of a herd's freedom from tuberculosis. To be classified as an “accredited” herd, all captive cervids in the herd eligible for testing must have tested negative to at least three consecutive official tuberculosis tests, conducted approximately annually. Once the herd was classified as accredited, it could maintain that status if all captive cervids eligible for testing in the herd tested negative to an official tuberculosis test conducted approximately every 2 years. Captive cervids from accredited herds would not have to be tested individually prior to interstate movement. Before reaching

accredited herd status, a herd could be classified as a “qualified” herd if all captive cervids eligible for testing in the herd tested negative to one official tuberculosis test. Captive cervids from qualified herds would have to test negative to one official tuberculosis test within 90 days prior to interstate movement. “Monitored” herd classification was included in the proposal mainly to accommodate captive cervid herds that are difficult to test on a whole herd basis because of their size or the conditions of their captivity (such as captive cervids raised under range conditions). We proposed that a herd could be classified as a monitored herd if slaughter records were sufficient to ensure that tuberculosis infection at a prevalence level of 2 percent or more would be detected with a confidence level of 95 percent. As with captive cervids from qualified herds, captive cervids from monitored herds would have to test negative to one official tuberculosis test within 90 days prior to interstate movement.

This final rule makes numerous changes to the proposed rule in response to the comments received. However, the basic structure of the proposed regulations, as outlined above, has not been changed. In the remainder of this preamble, we will discuss each section of the proposed regulations in more detail and the changes this final rule makes to those proposed sections.

First, we would like to give some background on some of the changes made in this final rule based on public comments concerning recommendations made by the United States Animal Health Association (USAHA) Tuberculosis Committee (the Committee).

In the preamble to the proposed rule we stated that the proposed subpart B for captive cervids was modeled after the regulations in part 77 for cattle and bison, and after the Uniform Methods and Rules—Bovine Tuberculosis Eradication (UMR for tuberculosis). The UMR for tuberculosis sets forth the tuberculosis eradication program for cattle and bison and is incorporated by reference into part 77 of the Code of Federal Regulations. On May 15, 1994, the Animal and Plant Health Inspection Service (APHIS) approved an addendum to the UMR for tuberculosis (the addendum) that included the provisions for interstate movement of captive cervids. These UMR addendum provisions covering interstate movement of captive cervids were contained in our proposed rule. The Committee and other interested parties periodically review the UMR for

tuberculosis in cattle and bison and the addendum for captive cervids and will recommend changes to these documents to APHIS. APHIS evaluates all recommended changes to the UMR for tuberculosis and will adopt recommendations that further program goals and objectives.

Since publication of the proposed rule, APHIS has adopted a number of changes recommended by the Committee and has incorporated them into the addendum for captive cervids. In fact, APHIS has adopted all of the recommendations proposed by the Committee in 1995 and 1996, with one exception, a recommendation concerning surveyed herd status (discussed later in this document). These adopted recommendations have been incorporated into the May 20, 1997, UMR addendum for tuberculosis in captive cervids.

Some commenters specified certain Committee recommendations that they suggested be included in this final rule. A number of commenters requested that all such recommendations be included in the final rule. APHIS concurs in large part with these suggestions. Since the drafting of the addendum, many captive cervid herd owners have been voluntarily complying with the provisions in the addendum for captive cervids concerning testing and interstate movement. Changes to the addendum are based on experience in using the official tuberculosis tests in these captive cervid herds as well as experience in applying the quarantines and testing protocols for interstate movement. These changes to and applications of the addendum have proven to be very effective and valuable. Accordingly, in order to incorporate the most current understanding of tuberculosis in captive cervids into the applicable provisions, this final rule will include changes based on those recommendations of the Committee in 1995 and 1996 that have been adopted by APHIS for the UMR addendum for tuberculosis in captive cervids.

In addition, we proposed to incorporate by reference the addendum for tuberculosis in captive cervids in the definition of "Uniform Methods and Rules—Bovine Tuberculosis Eradication" in § 77.1. Incorporating the addendum by reference into 9 CFR part 77 would give the provisions in the addendum the force and effect of regulations. However, in this final rule, we are not incorporating the addendum by reference into the regulations. As stated previously, the addendum has been modified each year since publication of the proposed rule. APHIS is again in the process of revising the

addendum to add changes based on recommendations by the Committee and other interested parties since 1996. Since APHIS is continuing to evaluate changes to the addendum, we do not believe it is appropriate at this time to incorporate the addendum by reference. As revisions to the addendum are completed, we will reevaluate the benefits of incorporating the addendum for tuberculosis in captive cervids by reference in 9 CFR part 77. Copies of the current edition of the UMR for tuberculosis and the addendum for tuberculosis in captive cervids can be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Changes to the Proposed Rule

Following is a discussion of all changes we are making to the proposed rule. The changes are discussed by section. Most changes are based on comments; a few are to improve clarity and consistency. The basis for each change is indicated.

Section 77.8 Definitions

We proposed § 77.8 to establish definitions of terms used throughout the subpart for captive cervids. We are making a number of changes to these definitions, as follows.

Definition of Accredited Herd

In proposed § 77.8, an accredited herd was defined as one that has tested negative to at least three consecutive official tuberculosis tests conducted at 10–14 month intervals. Commenters said that the Committee recommended that we revise the proposed testing schedule to allow the tests to be conducted at 9–15 month intervals in order to give herd owners more leeway in determining when to conduct their whole herd tests. This recommendation was made because a more flexible testing schedule is necessary to accommodate the seasonal cycles of cervids. Captive cervid owners should be given the flexibility to ensure they are not testing female captive cervids that are in the late stages of pregnancy, risking harm to the fetus. This means the best time to test females is usually December and January (after breeding, but still early in the pregnancy). However, the best time to test male captive cervids is usually April or May, after they have lost their antlers. This minimizes injuries and deaths during their handling. We agree that a 9–15 month interval for testing for accredited herd status would be beneficial for herd owners, and would not compromise the integrity of the whole herd test. Therefore, in this final rule, the

definition for accredited herd states that tests for herd accreditation may be conducted at 9–15 month intervals. We have made the same change in § 77.12, which concerns interstate movement from accredited herds.

We are also making another related change in § 77.12, which contains the provisions for accredited herd status. Proposed § 77.12, paragraph (d), stated that, to maintain accredited herd status, the herd must test negative to an official tuberculosis test within 22–26 months from the anniversary date of the third consecutive test with no evidence of tuberculosis disclosed. For the same reasons discussed above for changing the testing schedule to achieve accredited herd status, we are revising the testing schedule in paragraph (d) for maintaining accredited herd status. We will require instead that the herd test negative to an official tuberculosis test within 21–27 months from the anniversary date of the third consecutive test.

Definition of Accredited Veterinarian

We proposed to include a definition in § 77.8 for "accredited veterinarian." The proposed definition was consistent with the definition for accredited veterinarian in § 77.1 of the regulations. The proposed definition was, however, inconsistent with the definition for accredited veterinarian in 9 CFR part 160, "Accreditation of Veterinarians and Suspension or Revocation of Such Accreditation." The definition of accredited veterinarian in part 160 is the correct definition. Therefore, we are changing the definition in § 77.8 to be consistent with the definition in part 160. We are also similarly revising the definition in § 77.1. The definition will read as follows:

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of subchapter J to perform functions specified in subchapters B, C, and D of this chapter.

Definition of Captive Cervid

We are making a change to the definition in § 77.8 of "captive cervid." A few commenters said that it is unclear exactly what animals are covered under the term "cervid." The proposed definition of "captive cervid" states that a cervid would include all species of deer, elk, and moose. In response to comments, the definition of captive cervid in this final rule clarifies that all members of the family Cervidae will be considered cervids under this rule.

We are also making a related change to the rest of subpart B. A few commenters stated that parts of the

proposed regulations could be read to apply to wild cervids. The intention of the proposal was that the regulations apply only to captive cervids. A captive cervid was defined in proposed § 77.8 as being "All species of deer, elk, and moose raised or maintained in captivity for the production of meat and other agricultural products, for sport, or for exhibition. . . ." In addition, we believed that we used the term "captive cervid" throughout the proposed rule as often as necessary to make it clear that the rule only applied to captive cervids. However, we did not use the word "captive" every single time we used the word "cervid." To be certain that our intention is understood, we are replacing the term "cervid" with the term "captive cervid" every time that it appears.

We are also revising the definition of "captive cervid" in 9 CFR part 50, concerning indemnity for animals destroyed because of tuberculosis. In an interim rule published in the **Federal Register** on June 24, 1998 (63 FR 34259–34264, Docket No. 98–033–1), we stated that we were considering adding a definition of captive cervid to part 77, and that if we did, we proposed to revise the definition of captive cervid in part 50 to be consistent with part 77. We received two comments on the interim rule, and neither one objected to the proposal to revise the definition of captive cervid in part 50. Therefore, this final rule revises the definition of captive cervid in part 50 to make it the same as the definition this final rule adds to part 77.

Addition of Definition for Designated Tuberculosis Epidemiologist

In several places throughout the proposed rule, we delegated to the State and/or regional tuberculosis epidemiologist the authority to make decisions concerning the use and interpretation of diagnostic tests and the management of affected herds. The Committee recommended that we add a provision for a designated tuberculosis epidemiologist (DTE) who is specially trained in tuberculosis epidemiology, and that these authorities be delegated to the DTE.

In response to this recommendation, we have incorporated provisions for a DTE into our tuberculosis eradication program by identifying epidemiologists who are trained in tuberculosis epidemiology as DTE's. A DTE is responsible for determining the scope of epidemiological investigations, assisting in developing individual herd plans, and coordinating tuberculosis surveillance and eradication programs within a particular geographic area.

Previously, we relied primarily on the regional tuberculosis epidemiologists, who are specially trained in tuberculosis epidemiology, to perform these responsibilities. We currently have only four regional tuberculosis epidemiologists. Because the volume of responsibilities is high, we proposed that State epidemiologists share these responsibilities. State epidemiologists may not be specially trained in tuberculosis epidemiology, but typically have more general knowledge. We agree with the Committee that authorizing DTE's identified by APHIS as having expertise in tuberculosis epidemiology will help ensure that there is an adequate number of epidemiologists to perform the required responsibilities. Regional tuberculosis epidemiologists (employed by APHIS) are now also DTE's for their region. Some States have additional DTE's (employed by the State) due to the volume of responsibilities in that State.

We also agree that the authority to make decisions concerning the use and interpretation of diagnostic tests and the management of affected herds should be given to the DTE. In this final rule, we are adding a definition for the DTE to read as follows:

Designated tuberculosis epidemiologist (DTE). An epidemiologist designated by APHIS to make decisions concerning the use and interpretation of diagnostic tests and the management of affected herds under this subpart.

We are also replacing "State and/or regional tuberculosis epidemiologist" with "DTE" each time it appeared in the proposed rule. In one place, § 77.11(b)(4)(iii), the proposed rule gave test interpretation authority to cooperating State or Federal animal health officials. This final rule gives that authority to the DTE. Further, in § 77.11(a)(2), we are adding a provision for the DTE to make judgments concerning the interpretation of the single cervical tuberculin (SCT) test. In § 77.16(e), we are adding a provision for the DTE to make judgments concerning further testing of a herd that has received captive cervids from an affected herd. These changes are discussed later in this document.

Definition of Exposed Captive Cervid

The proposed rule included a definition in § 77.8 of "exposed captive cervid" to mean any captive cervid that has been exposed to tuberculosis by reason of associating with tuberculous captive cervids, cattle, or bison. One commenter said that we should also consider a captive cervid exposed to tuberculosis by reason of associating with any species of tuberculous

livestock. We agree with the commenter that livestock other than captive cervids, cattle, or bison can transmit tuberculosis to captive cervids. Further, captive cervids in mixed herds (including noncervids, such as antelopes, llamas, or other species) are at a risk of contracting tuberculosis from types of animals other than captive cervids, cattle, or bison. Therefore, this final rule defines "exposed captive cervid" as any captive cervid exposed to tuberculosis by reason of associating with tuberculous captive cervids, cattle, bison, or other livestock. In conjunction with this change, we have changed the requirements for additions to classified herds in proposed §§ 77.12(c)(4), 77.13(c)(4), and 77.14(c)(4). The proposed rule stated that a captive cervid to be added to a classified herd must not have been exposed during the 90 days prior to its movement to a captive cervid from a herd with a lower classification status than its own. This final rule adds that the captive cervid to be added must also not have been exposed to any tuberculous livestock during the same 90 day period. We are also adding a definition of "livestock" to § 77.8. This is discussed below.

We are also making another change to the definition of exposed captive cervid for clarity. The proposed definition of exposed captive cervid used the term "tuberculous." The definition of tuberculous, as revised later in this document, includes the concept of exposed livestock. Therefore, using the word "tuberculous" in the definition of exposed cervid is misleading. We are removing the word "tuberculous" from the definition of exposed captive cervid. In this final rule, the definition will read that an exposed captive cervid is any captive cervid that has been exposed to tuberculosis by reason of associating with captive cervids, cattle, bison, or other livestock from which *M. bovis* has been isolated.

Addition of Definition of Livestock

We are adding a definition of livestock to the new subpart B in part 77. In an interim rule effective and published in the **Federal Register** on July 24, 1995 (60 FR 37804–37810, Docket No. 94–133–1), we added a definition of livestock to 9 CFR part 50, "Animals Destroyed Because of Tuberculosis." In an interim rule effective and published in the **Federal Register** on February 23, 1998 (63 FR 8837–8840, Docket No. 97–062–1), we added the same definition of livestock to § 77.1 (subpart A under this final rule), concerning cattle and bison. The definition we added to parts 50 and 77 reads:

Livestock. Cattle, bison, 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.

Because of the addition of livestock to the definition of "exposed captive cervid," and to be consistent with the regulations in part 50 and subpart A of part 77, for cattle and bison, we are adding this same definition to subpart B, § 77.8, concerning captive cervids.

We are making a related change to the proposed definition of "herd." Specifically, § 77.8 of the proposed rule defined "herd" to mean "A group of captive cervids or a group of captive cervids and other hoof stock maintained on common ground, or two or more groups of captive cervids and other hoof stock under common ownership or supervision that are geographically separated but that have movement of animals between groups without regard to health status. (A group means one or more animals.)" For consistency, we are changing this definition by replacing the term "hoof stock" with the term "livestock." We believe the intent is the same, and that the change is necessary in order to be consistent with the terminology used in part 50 and part 77, subpart A, for cattle and bison.

Definition of Moved Directly

In the proposed rule, we defined the term "moved directly" to mean "(m)oved without unloading en route if moved in a means of conveyance, or without stopping if moved in any other manner, and without stopover or diversion to assembly points of any type." We defined this term because we proposed to require throughout the subpart that captive cervids be "moved directly" to slaughter, or "moved directly" from a classified herd, for example. Requiring in these instances that the captive cervids be moved directly, as described above, would minimize the risk of the tuberculous captive cervids spreading the disease, and would minimize the risk of healthy captive cervids becoming diseased en route to their destination through contact with tuberculous animals. Several commenters were concerned that the "moved directly" requirement would unduly restrict the ability for owners to ship captive cervids long distances, especially for herd additions to classified herds. Captive cervids may need to be unloaded for feeding and rest if they are being moved over an extended period of time. We agree with commenters that the definition for moved directly is unnecessarily restrictive. As long as the captive

cervids are isolated so that they cannot mingle with any livestock other than the ones with which they are being moved (such as at assembly points where livestock are assembled for sale), they may be safely unloaded en route to their destination. Therefore, the definition of "moved directly" has been changed to read as follows in this final rule:

Moved directly. Moved without stopping or unloading at livestock assembly points of any type. Captive cervids being moved directly may be unloaded from the means of conveyance while en route only if they are isolated so that they cannot mingle with any livestock other than those with which they are being shipped.

Definition of Negative

The proposed rule defined a negative captive cervid to mean a captive cervid that shows no response to an official tuberculosis test or is classified negative for tuberculosis by the testing veterinarian based upon history, supplemental tests, examination of the carcass, or laboratory results. One commenter suggested we be more specific about "laboratory results." Another commenter said that a negative classification based on anything other than no response to an official tuberculosis test should always be based, in part, on laboratory results. We agree with the commenters. The laboratory analysis we require for determining the existence of *M. bovis* is histopathology and culture of selected tissues. Histopathology involves studying selected tissue samples under a microscope; culture involves attempting to grow *M. bovis* from selected tissues samples. In response to these comments, we are changing the definition of negative captive cervid by removing the phrase "or laboratory results" and replacing it with the phrase "and negative histopathology and culture of selected tissues."

Definition of Reactor

In the proposed rule, a reactor captive cervid was defined to mean "Any cervid that shows a response to an official tuberculosis test and is classified a reactor by the testing veterinarian; or any suspect cervid that is classified a reactor upon slaughter or necropsy by the USDA or State veterinarian performing or supervising the necropsy." We proposed to reclassify a suspect as a reactor if evidence of tuberculosis was found upon slaughter or necropsy. This would allow the owner of the captive cervid to collect reactor indemnity for the slaughter of a reactor animal. One commenter recommended that a suspect only be reclassified as a reactor if the slaughter

or necropsy included laboratory follow-up. It was our intention to only allow reclassification if the slaughter or necropsy were followed by histopathology and/or culture of selected tissues. It can take several months to receive results of culture examination, while histopathology results are often available within a week. For this reason, we would not necessarily require culture results before we would reclassify a captive cervid as a reactor. In response to this comment, we have revised the definition of reactor in § 77.8 to make it clear that a suspect may only be reclassified as a reactor upon slaughter or necropsy after histopathology and/or culture of selected tissues.

Several commenters stated that they agreed with the provision for reclassifying suspect captive cervids as reactors in order that owners may receive reactor indemnity. They pointed out, however, that the same provision is not included in the definition in part 77 for reactor cattle and bison. We are considering this comment. However, because the standards are different for cattle and bison, we are not making any changes to the regulations in response to this comment. If we determine a similar provision appears appropriate for cattle and bison, we will propose it in a separate document.

Definition of Suspect

We proposed to define a suspect as a captive cervid that "is not negative to any official tuberculosis test and that is not classified as a reactor by the testing veterinarian." One commenter pointed out to us that classification using the blood tuberculosis (BTB) test is different than for other official tuberculosis tests. For this reason, we are defining suspect in this final rule as a captive cervid that is not negative to the single cervical tuberculin (SCT) test or the comparative cervical tuberculin (CCT) test, or that is classified by the testing laboratory as equivocal to the BTB test, and that is not classified as a reactor by the testing veterinarian. We are also revising the definitions for "reactor" and "negative" to reflect the classifications based on the BTB test. We are adding that, when using the BTB test, captive cervids are classified as reactors based on an "*M. bovis* positive" classification from the testing laboratory, and captive cervids are classified as negative based on an "avian" or "negative" classification from the testing laboratory. These classifications are consistent with the provisions for interpreting the BTB test in § 77.11(c).

Definition of Tuberculous

The proposed rule defined "tuberculous" to mean "(I)nfectious with, exposed to, or having lesions indicative of tuberculosis, or identified as a suspect or reactor based on an official tuberculosis test." However, this definition is inconsistent with the intended meaning of tuberculous as used throughout the proposed rule and this final rule. There is no place in this final rule where we use the word tuberculous with the intention of including suspects; and, there is only one place where we use the word tuberculous with the intention of including reactors (discussed below). The proposed definition of tuberculous to include such animals was overly inclusive and incorrect. We also believe it would be more precise to clarify that by "exposed to" we mean "from a herd in which *M. bovis* has been isolated" (i.e., an affected herd). Captive cervids from affected herds are considered exposed to tuberculosis. This final rule, therefore, defines tuberculous to mean having lesions indicative of tuberculosis, infected with tuberculosis based on the isolation of *M. bovis*, or being from a herd in which *M. bovis* has been isolated.

One place where the proposal used the word "tuberculous" with the intention of including reactor animals is in the proposed regulations concerning cleaning and disinfection of premises, conveyances, and materials. These regulations are in proposed § 77.18 for captive cervids; we also added the same requirements to the regulations for cattle and bison in proposed § 77.7. These sections propose, in part, that all conveyances and associated equipment, premises, and structures that are used in connection with the interstate movement of captive cervids, cattle, or bison and that are determined by cooperating State and Federal animal health officials to be contaminated because of occupation or use by *tuberculous* captive cervids, cattle, or bison must be cleaned and disinfected under the supervision of the cooperating State or Federal animal health officials. We intended tuberculous, in this case, to include reactor animals. Under the UMR for tuberculosis, we have always required cleaning and disinfection of premises, conveyances, and materials when they have been used in connection with the interstate movement of reactor cattle and bison because reactors carry a significant risk of actually being infected with tuberculosis. We do not require cleaning and disinfection when the premises, conveyances, and materials have been

used in connection with the interstate movement of suspects because suspects are less likely to actually be infected with *M. bovis*. In light of the revised definition of "tuberculous" in this final rule, and to ensure that conveyances, premises, materials, and equipment used in the handling of reactors are properly cleaned and disinfected, we are changing §§ 77.7 and 77.18 to refer to "tuberculous or reactor" animals.

We are also making a change to §§ 77.7 and 77.18 in connection with the addition of the word "livestock" to the definition of "exposed captive cervid" and the addition of a definition for "livestock" to § 77.8. As discussed earlier, one commenter was concerned that livestock other than captive cervids, cattle, and bison can transmit tuberculosis to captive cervids. For this reason, we have added the word "livestock" to the definition of exposed captive cervid and have added a definition of livestock to § 77.8. For the same reason, we are changing §§ 77.7 and 77.18 to require the cleaning and disinfection of all conveyances and associated equipment, premises, and structures that are used in connection with the interstate movement of captive cervids, cattle, or bison and that are determined to be contaminated because of occupation or use by any tuberculous or reactor *livestock*.

Section 77.9 General Restrictions

We proposed in § 77.9 to establish general requirements for interstate movement of captive cervids to apply to all captive cervids, regardless of their herd's classification status.

In proposed § 77.9, paragraph (a) stated that no captive cervid may be moved interstate unless it had been tested with an official tuberculosis test. One commenter was concerned that this requirement was contrary to the provisions that allow movement of captive cervids from accredited herds without additional testing. In response to this comment, we are adding a phrase to § 77.9(a) to state that the testing requirement does not apply to interstate movements from accredited herds.

In § 77.9(c), we proposed to require that each captive cervid or shipment of captive cervids to be moved interstate must be accompanied by a certificate issued before the movement by a State or Federal animal health official or an accredited veterinarian. We are adding a requirement that the certificate must be issued within 30 days of the movement. This should have appeared in the proposed rule, and is necessary in order to ensure that the information appearing on the certificate is current and accurate.

We are changing a reference in § 77.9(d) to the American Association of Zoological Parks and Aquariums (AAZPA). This association has changed its name to the American Zoo and Aquarium Association (AZA).

Section 77.10 Testing Procedures for Tuberculosis in Captive Cervids

The proposed rule specified three official tuberculosis tests—the single cervical tuberculin (SCT) test, the comparative cervical tuberculin (CCT) test, and the blood tuberculosis (BTB) test. Proposed § 77.10 set forth testing procedures to be followed when using these official tuberculosis tests.

Paragraph (a) of proposed § 77.10 stated that, with some exceptions, official tuberculosis tests may only be administered by a veterinarian employed full-time by the State in which the test is administered or by a veterinarian employed full-time by the U.S. Department of Agriculture (USDA). Commenters cited the Committee recommendation that we remove the requirement that a testing veterinarian be employed "full-time" by the State or by USDA. The Committee believes that requiring testing veterinarians to be employed full-time by the State or USDA would place too great a restriction on the number of veterinarians eligible to perform official tuberculosis tests. We agree, and we do not believe it is necessary to require that they be employed full-time. Therefore, in this final rule, we have removed the "full-time" requirement in § 77.10(a), and in each place throughout the remainder of the rule where we proposed to require a testing State or USDA veterinarian to be employed "full-time."

The Texas Veterinary Medical Center at Texas A&M University in College Station, TX, was specified in proposed § 77.10(b) as the only laboratory to which test samples for the BTB test could be sent. One commenter said that the Texas Veterinary Medical Center should not be the only laboratory approved for analysis of BTB samples. The commenter requested that we revise the rule to allow samples to be sent to "any laboratory approved by APHIS to conduct the BTB." At the present time, the Texas Veterinary Medical Center is the only laboratory in the United States equipped to conduct the test. Other laboratories that conduct the BTB test are outside the United States, and we have not evaluated their capability. In response to the comment, we are revising paragraph (b)(2) to read: "The following laboratories are approved to perform the BTB: Texas Veterinary Medical Center laboratory at Texas A&M

University in College Station, Texas.” This revision will allow APHIS to add other laboratories to the list of approved laboratories as they become equipped and approved to conduct the BTB test.

Paragraph (c) of proposed § 77.10 stated that “(a)ny captive cervid tested with an official tuberculosis test must be individually identified by an official eartag at the time of the official tuberculosis test.” The Committee recommended that we additionally allow captive cervids to be identified by other types of identification, such as a tattoo. For example, some herd owners prefer a tattoo identification because it is permanent and cannot be pulled off or lost like an eartag. APHIS has approved this recommendation, and § 77.10(c) of this final rule includes provisions for identifying captive cervids with a device other than an official eartag. As discussed above, a common alternate form of identification is a tattoo. However, there are other types of identification available, and still others may be developed. Our only criteria is that the identification must be unique and traceable. Therefore, we will require that use of any identification device or method other than an official eartag must first be approved by the Administrator as being unique and traceable. Written requests for approval must be sent to National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231. In the remainder of the rule, each time a reference is made to an eartag identification, we are adding a reference to other approved identification that is unique and traceable.

We are also revising proposed § 77.10(c) to clarify it. The proposed paragraph states that each captive cervid tested with an official tuberculosis test must be individually identified “at the time of the official tuberculosis test.” This wording could be read to mean that a captive cervid must be reidentified each time it is tested. Practically speaking, this could be the case with an official eartag, since eartags do come off. However, the intention of the requirement was that each captive cervid must bear official identification at the time of the test so that the identification number can be recorded. If a captive cervid still bears its original official eartag, it does not have to be eartagged again. If the tattoo on a captive cervid is still legible, the captive cervid does not have to be tattooed again. To avoid confusion, we are revising § 77.10(c) to state that each captive cervid tested with an official tuberculosis test “must bear individual identification in the form of an official eartag, or another unique and traceable

identification device or method approved for use by APHIS, at the time of the official tuberculosis test.”

Paragraph (d) of proposed § 77.10 concerned reporting of official tuberculosis tests, and stated that test reports must include the following information: The official eartag number; the age, sex, and breed of each captive cervid tested; a record of all responses; the size of each response (if appropriate for that test); and the test interpretation. The Committee recommended that reports on the BTB test also include a summary of data supporting the test interpretation, and that full supporting data be submitted by the testing laboratory on a case-by-case basis at the request of cooperating State and Federal animal health officials. This information would assist State and Federal animal health officials in evaluating the tuberculosis status of a herd tested with the BTB test. We agree with this recommendation, and have added this requirement to § 77.10(d) in this final rule for the BTB test.

We are making another change to proposed § 77.10(d) for consistency. Proposed paragraph (d) stated that the testing veterinarian must submit a report to cooperating State and Federal animal health officials for all official tuberculosis tests. Paragraph (c)(5) of proposed § 77.11 set forth requirements for conducting the BTB test, and stated that BTB test results must be submitted by the testing laboratory to the person, firm, or corporation responsible for the management of the herd, cooperating State and Federal animal health officials of the State in which the captive cervid is tested, and the testing veterinarian. We realize that these two sets of requirements conflict. For this reason, we are placing the requirements in proposed § 77.10(d) into a new paragraph, § 77.10(d)(1), that will apply only to the SCT and CCT official tuberculosis tests. We are also placing the requirements for reporting BTB test results that are in proposed § 77.11(c)(5) into a new paragraph, § 77.10(d)(2), that will apply only to the BTB official tuberculosis test.

We are also making a clarification in § 77.10(d) concerning reporting of responses to the SCT and CCT tests. We proposed that reports on the SCT test and the CCT test must include, among other things, “the size of each response (if appropriate for that test).” The SCT test is not interpreted based on a measured response; therefore, reporting the size of the response would not be appropriate for the SCT test. The CCT test is interpreted based on a measured response. To make this more clear, we have revised this requirement to state

that the report must include “the size of each response for the CCT test.”

Paragraph (f) of proposed § 77.10 stated that testing of captive cervids for classification must include all captive cervids 1 year of age or over and any captive cervids other than natural additions (captive cervids born into the herd) under 1 year of age. Further, proposed paragraph (f) provided that all natural additions under 1 year of age must be individually identified by an official eartag and recorded in the test report as members of the herd at the time of the herd test, even though they are not tested. One commenter said that the advantage in not testing captive cervids under 1 year of age is that the handling required for testing is too stressful on young captive cervids and could result in a high rate of mortality. The commenter said that the handling required for identifying captive cervids carries the same risk to young captive cervids as testing, and that captive cervids under 1 year of age that are exempted from testing should also be exempted from being individually identified.

We agree that captive cervids under 1 year of age are highly excitable and fragile, and this was part of the reason for exempting natural additions under 1 year of age from testing. We also agree that it makes sense, therefore, to exempt these animals from the identification requirement, as well. Therefore, we are removing the proposed requirement in § 77.10(f) that natural additions under 1 year of age must be individually identified by an official eartag and recorded in the test report as members of the herd at the time of the herd test.

Section 77.11 Official Tuberculosis Tests

Proposed § 77.11 described each of the three official tuberculosis tests (the SCT test, the CCT test, and the BTB test), when each may be used, and the classification the testing veterinarian would have to confer depending upon a captive cervid's response to each test. As discussed previously in this document, in conjunction with the addition of the DTE to this final rule, we are adding a provision in § 77.11(a)(2) for the DTE to make judgments concerning the interpretation of the SCT test. In the proposed rule, paragraph (a)(2) stated that, in affected herds and in herds that have received captive cervids from an affected herd, each captive cervid that responds to the SCT test must be classified as a reactor. We are adding a provision in this final rule that, in such herds, the DTE may judge that captive cervids responding to the SCT test should be classified as

suspects. This provision is necessary in some circumstances where previous tests have given a degree of certainty that the prevalence of tuberculosis in the herd is low. For example, § 77.16(d) of this final rule requires that affected herds must be quarantined until the herd has tested negative to three whole herd tests in succession. After two or three SCT tests in which reactors show no evidence of tuberculosis on necropsy, the DTE may determine that captive cervids in the herd that respond on subsequent SCT tests should be classified as suspects. Classifying the captive cervids as suspects allows herd owners to send the responding captive cervids to slaughter, where they would be able to recoup some money for the loss of the animal. However, the suspect captive cervid will still be slaughtered inspected. If evidence of tuberculosis is found after histopathology and/or culture of selected tissues, the captive cervid will be reclassified as a reactor. This provision is consistent with similar provisions throughout the final rule that allow the DTE to make judgments concerning interpretation of official tuberculosis tests.

We are also making changes to the test interpretation guidelines for the CCT test that appear in § 77.11(b). In the proposed rule, paragraph (b) described the interpretation of the CCT test as follows: Any captive cervid with a response to bovine PPD tuberculin that is less than 1 mm would be classified as negative. Any captive cervid with a response to the avian PPD tuberculin that is greater than the response to the bovine PPD tuberculin would be classified as negative. Any captive cervid with a response to the bovine PPD tuberculin which is 2 mm or greater and that is equal to the response to the avian PPD tuberculin would be classified as a suspect, unless the testing veterinarian determines that the captive cervid should be classified as a reactor. Any captive cervid with a response to the bovine PPD tuberculin that is 2 mm or greater and that is at least 0.5 mm greater than the response to the avian PPD tuberculin would be classified as a reactor. Animals classified as suspects on two successive CCT tests would be classified as reactors.

The Committee recommended slight changes to these interpretation guidelines for the CCT test that we believe will result in a more accurate interpretation of the CCT test. Therefore, in this final rule, we are revising the proposed requirements for CCT test interpretation as follows: Any captive cervid with a response to the bovine PPD tuberculin that is less than 1 mm will be classified as negative. Unless the

testing veterinarian determines that the captive cervid should be classified as a reactor due to possible exposure to a tuberculous animal, a captive cervid tested with the CCT test will be classified as a suspect if it has a response to the bovine PPD tuberculin that is greater than 2 mm and that is equal to the response to the avian PPD tuberculin, or it has a response to the bovine PPD tuberculin that is equal to or greater than 1 mm and equal to or less than 2 mm, and that is equal to or greater than the response to the avian PPD tuberculin. A captive cervid tested with the CCT test will be classified as a reactor if it has a response to the bovine PPD tuberculin that is greater than 2 mm and that is at least 0.5 mm greater than the response to the avian PPD tuberculin, or it has been classified as a suspect on two successive CCT tests. Any exceptions to reactor classification under these conditions must be justified by the testing veterinarian in writing and have the concurrence of the DTE.

We are also making a clarification in § 77.11(b). In the proposed rule, paragraph (b) stated that the CCT test may be used in affected herds only after the herd has tested negative to two whole herd SCT tests, and only with the prior written consent of cooperating State or Federal animal health officials. Because of the addition of the DTE (discussed previously in this document), this final rule requires that written consent must be given by the DTE. We are also revising this requirement to state that the CCT test may be used in affected herds only after the herd has tested negative to *at least* two whole herd SCT tests. This was our intended meaning, and will allow the DTE to require the application of additional SCT tests before the CCT test is used, if warranted.

Section 77.12 Interstate Movement From Accredited Herds

Proposed §§ 77.12 through 77.14 contained the provisions for testing and interstate movement for herds participating in the herd accreditation program. Proposed § 77.12 concerned accredited herds, the highest classification under the herd accreditation program. The section described testing necessary to be recognized as an accredited herd, how to maintain accredited herd status, including regular testing of captive cervids in the herd and testing of captive cervids being added to the herd, and how captive cervids can move interstate from accredited herds.

Paragraph (a)(1) of proposed § 77.12 stated that, to be recognized as an

accredited herd, all captive cervids in the herd eligible for testing must have tested negative to at least three consecutive official tuberculosis tests. In accordance with proposed § 77.10(f), eligible animals include all captive cervids 1 year of age and over and any captive cervids other than natural additions (captive cervids born into the herd) under 1 year of age. The Committee recommended that, for accredited herd recognition, we additionally provide that captive cervids under 1 year of age that are not natural additions do not have to be tested if they were born in and originate from an accredited herd. Testing is very stressful to captive cervids, and particularly to young captive cervids. We agree that this change would save herd owners from having to test some captive cervids under 1 year of age without compromising the integrity of the testing for accredited herd recognition. We are adding this provision in this final rule.

Paragraph (c) of proposed § 77.12 set forth conditions under which captive cervids may be added to an accredited herd. Under proposed paragraph (c)(4), if the captive cervid to be added is not being moved directly from an accredited or qualified herd, the captive cervid would have to be isolated from all members of the receiving accredited herd until it tests negative to an official tuberculosis test conducted at least 90 days following the date of arrival at the premises of the accredited herd. Such herd additions would not receive status as members of the accredited herd until they have tested negative and been released from isolation. This also means that herd additions from accredited or qualified herds would receive status as members of the receiving accredited herd without having to be isolated for at least 90 days and without testing negative for tuberculosis.

One commenter was concerned that exempting herd additions from qualified herds from the testing described above will reduce the level of assurance that captive cervids from an accredited herd are free of tuberculosis. Further, given the reduced assurance of freedom from tuberculosis, the commenter saw this exemption as a loophole that will lower the incentive for herd owners to do the testing required to achieve accredited herd status and then to maintain it. The commenter said that captive cervids from qualified herds to be added to an accredited herd should also be isolated for at least 90 days and test negative for tuberculosis before they can be considered members of the accredited herd.

We agree with the commenter. Requiring testing of any herd addition to an accredited herd that is not moved directly from another accredited herd will provide the highest level of assurance that captive cervids from accredited herds are free of tuberculosis, and in turn, will support our goal of eradicating tuberculosis in captive cervid herds. In order to add the testing requirement for herd additions from qualified herds to accredited herds, this final rule reorganizes paragraph (c) from what was proposed. We are removing proposed paragraph (c)(4), and proposed paragraph (c)(5) will become (c)(4). We are adding requirements to paragraph (c)(2) and (c)(3), which concern herd additions from qualified and monitored herds and from unclassified herds, to require that these herd additions must be isolated from all members of the receiving accredited herd until they test negative to an official tuberculosis test conducted at least 90 days following the date of arrival at the premises of the accredited herd. Such herd additions will not receive status as members of the receiving accredited herd until they have tested negative and been released from isolation.

Section 77.13 Interstate Movement from Qualified Herds

Proposed § 77.13 concerned qualified herds under the herd accreditation program. As in proposed § 77.12 for accredited herds, proposed § 77.13 described the testing required for a herd to achieve and maintain qualified herd status and how captive cervids can move interstate from qualified herds.

Paragraph (a)(1) of proposed § 77.13 stated that, to be recognized as a qualified herd, all captive cervids in the herd eligible for testing must have tested negative to one official tuberculosis test. In accordance with proposed § 77.10(f), eligible animals included all captive cervids 1 year of age and over and any captive cervids other than natural additions under 1 year of age. For the same reason discussed above for accredited herds, the Committee recommended that, for qualified herd recognition, we additionally provide that captive cervids under 1 year of age that are not natural additions do not have to be tested if they were born in and originated from an accredited, qualified, or monitored herd. We agree with this change, and are adding this provision in this final rule.

The Committee further recommended that the official tuberculosis test for recognition of a herd as a qualified herd must be administered to all captive cervids in the herd eligible for testing within a 7-month period. We believe

that this testing schedule would allow herd owners time to test all their animals, while ensuring that results of the test are an accurate reflection of the herd's current tuberculosis status. We have added this provision to § 77.13(a)(1) in this final rule.

Paragraph (b) of proposed § 77.13 stated that a captive cervid from a qualified herd may be moved interstate only if the captive cervid is not known to be infected with or exposed to tuberculosis and is accompanied by a certificate that states, among other things, that the captive cervid has tested negative to an official tuberculosis test conducted within 90 days prior to the date of movement. The Committee recommended that we exempt captive cervids under 1 year of age from this testing requirement, for the same reason discussed above for testing of herds for accredited and qualified herd status. We agree that testing is stressful to captive cervids under 1 year of age, and we believe that exempting young captive cervids from testing for interstate movement is consistent with the exemptions discussed above for testing under §§ 77.12(a)(1) and 77.13(a)(1). Therefore, we are adding a paragraph (b)(3) to § 77.13 in this final rule to allow captive cervids under 1 year of age that are natural additions or that were born in and originated from a classified herd to be moved interstate from a qualified herd without testing if they are accompanied by a certificate stating that they originated from the qualified herd or were born in and originated from a classified herd and have not been exposed to captive cervids from an unclassified herd.

Paragraph (d) of proposed § 77.13 stated that, to maintain qualified herd status, the herd must test negative to an official tuberculosis test within 10–14 months from the anniversary date of the first test with no evidence of tuberculosis disclosed. Previously in this document, we discussed an extension of the intervals for testing to achieve and maintain accredited herd status, based on the Committee's recommendation that we allow more time for testing to accommodate the seasonal cycles of captive cervids. For the same reason, this final rule will require instead that, to maintain qualified herd status, the herd must test negative to an official tuberculosis test within 9–15 months from the anniversary date of the first test.

Section 77.14 Interstate Movement From Monitored Herds

Proposed § 77.14 concerns monitored herds under the herd accreditation program. As discussed previously,

monitored herd classification was included in the proposal mainly to accommodate captive cervid herds that are difficult to test on a whole herd basis because of their size or the conditions of their captivity (such as captive cervids raised under range conditions). We proposed to allow herds to be monitored for tuberculosis according to their slaughter records. Proposed § 77.14 also described how to maintain monitored herd status, including submission of slaughter records and testing of captive cervids being added to the herd, and how captive cervids can move interstate from monitored herds.

In proposed § 77.14, paragraph (a) set forth qualifications that must be met in order for a herd to be recognized as a monitored herd. Among other things, paragraph (a)(1) stated that identification records must be maintained by the person, firm, or corporation responsible for the management of the herd on all captive cervids in the herd that are slaughtered, inspected, and found negative for tuberculosis at an approved slaughtering establishment or necropsied at an approved diagnostic laboratory. The Committee recommended that we also allow records for monitored herd qualification to include records on captive cervids from the herd that are tested for interstate movement. We agree with this recommendation. Herd owners would be able to receive credit for monitored herd status based on negative testing animals, in addition to slaughter inspected animals, allowing more herd owners to achieve monitored herd status. Therefore, this final rule adds a provision to § 77.14(a)(1) that identification records kept as part of the monitored herd qualification may also include records on captive cervids from the herd that tested negative for tuberculosis in accordance with requirements for interstate movement. To maintain the reliability of these records in reflecting a herd's tuberculosis status, we will require that at least one half of the captive cervids on which records are kept be slaughter inspected. We are also changing the remainder of § 77.14 as appropriate to reflect the change in paragraph (a)(1).

We are also making a change to proposed § 77.14(a)(2) in conjunction with allowing records on captive cervids tested for interstate movement. Proposed paragraph (a)(2) required that a "sufficient number of cervids in the herd must be slaughtered * * * to ensure that tuberculosis infection at a prevalence level of 2 percent or more will be detected with a confidence level of 95 percent." Proposed paragraph

(a)(2) stated that this will require a maximum number of 148 captive cervids slaughtered over a 3-year period, no matter the size of the herd. However, testing provides a lower level of detection of tuberculosis in captive cervids than inspections at slaughter because infection with *M. bovis* can only be determined with certainty after laboratory analysis of samples taken from a slaughtered animal. Therefore, in order to ensure that testing and slaughter records will enable tuberculosis infection to be detected at a prevalence level of 2 percent or more with a confidence level of 95 percent, a maximum of 178 captive cervids, rather than 148 captive cervids, must be slaughtered inspected or tested for interstate movement over a 3-year period, no matter the size of the herd. We have made this change in § 77.14(a)(2).

There is a footnote in § 77.14(a)(2) which states that a chart can be obtained from APHIS that would show the minimum number of captive cervids that must be slaughtered in order to achieve this confidence level.

We are also changing the definition of "monitored herd" in § 77.8 to reflect the allowance of records on captive cervids tested for interstate movement.

Paragraph (b) of proposed § 77.14 stated that a captive cervid from a monitored herd may be moved interstate only if the captive cervid is accompanied by a certificate that states, among other things, that the captive cervid has tested negative to an official tuberculosis test. We are adding a provision to § 77.14(b) to allow captive cervids under 1 year of age that are natural additions or that were born in and originated from a classified herd to be moved interstate from a monitored herd without testing if they are accompanied by a certificate stating that they originated from the monitored herd or were born in and originated from a classified herd and have not been exposed to captive cervids from an unclassified herd. We are adding this provision for monitored herds for the same reasons discussed previously for adding this provision for captive cervids under 1 year of age in qualified herds.

We are also making a clarification in proposed § 77.14(d). Paragraph (d) stated that, in order to maintain monitored herd status, an annual report must be submitted to cooperating State or Federal animal health officials giving, among other things, the number of captive cervids from the herd over 1 year of age identified, slaughtered, and inspected at an approved slaughtering establishment or necropsied at an approved diagnostic laboratory during

the preceding year. (As explained previously in this document, under this final rule, we will also allow the annual report to include captive cervids that have tested negative for tuberculosis in accordance with interstate movement requirements.) For accuracy, we are revising the phrase "over 1 year of age" to read "1 year of age and older." This is consistent with provisions that exempt captive cervids under 1 year of age from the testing requirements.

Section 77.15 Interstate Movement from Unclassified Herds

The regulations in proposed § 77.15 for unclassified herds would apply to captive cervids from herds not participating in the herd accreditation program, herds that have not yet achieved classification as accredited, qualified, or monitored, or herds that have lost classification status because the requirements of §§ 77.12, 77.13, or 77.14 for maintaining classification were not met.

Proposed § 77.15 stated that for a captive cervid to be moved interstate from an unclassified herd, the captive cervid must have tested negative to two official tuberculosis tests conducted no less than 90 days apart, and that the captive cervid must have been isolated from all other animals during the testing period (the period beginning at the time of the first test and ending at the time of interstate movement). Several commenters asked if this meant that each individual captive cervid in a group would have to be isolated individually in separate holding pens. They said that this would be a considerable burden on captive cervid owners, both because of the cost of providing facilities with separate holding pens, and because of the stress to the captive cervids from being held in isolation for up to 180 days (most movements would require an official tuberculosis test 90 days after movement to a new herd, requiring another 90 day isolation).

It was not our intention to require that each individual captive cervid be isolated in a separate holding facility. If a group of captive cervids are moving together from an unclassified herd to the same destination, we would allow them to be isolated as a group. The isolation would only have to be such that the captive cervids being tested did not come in contact with any other animals, including captive cervids from the unclassified herd that are not moving as part of the group. In response to the comments, we are adding a sentence to § 77.15(a)(3) stating that, if a group of captive cervids is being moved together to the same destination, the entire group

must be isolated from all other animals, but captive cervids in the group need not be isolated from each other, during the testing period. We are making the same clarification in other parts of the regulations that refer to isolation of captive cervids during testing: § 77.12(c)(2) and (c)(3), § 77.13(c)(3), and § 77.14(c)(3).

Several commenters had questions concerning types of herds that do have tuberculosis monitoring, but would not be able to conform to the definitions of accredited, qualified, or monitored herds. For example, one commenter asked that certain isolated free-ranging reindeer herds be recognized as monitored herds. The commenter stated that the reindeer are not identified because of difficulty in herding them, but the number slaughtered annually exceeds the proposed requirements for monitored herd status. Commenters asked that different interstate movement requirements be established to accommodate this type of industry. In response to these comments, we are adding a new paragraph to § 77.15, "Interstate movement from unclassified herds," that would allow APHIS to evaluate the unique conditions of captive cervid herds that do not conform to the requirements of classified herds, but that do have a level of monitoring or isolation that would warrant different interstate movement requirements from those required for unclassified herds. The new paragraph will state that "The Administrator may, with the concurrence of the cooperating State animal health officials of the State of destination, and upon request in specific cases, permit the movement of captive cervids not otherwise provided for in this subpart, which have not been classified as reactors and are not otherwise known to be affected with tuberculosis, under such conditions as the Administrator may prescribe in each specific case to prevent the spread of tuberculosis. The Administrator shall promptly notify the appropriate cooperating State animal health officials of the State of destination of any such action." This paragraph is identical to current provisions in § 77.6 for cattle and bison.

Section 77.16 Other Interstate Movements

This section was proposed to regulate the interstate movement of captive cervids from herds considered to be at the highest risk for tuberculosis. These include herds that contain reactors, suspects, or exposed captive cervids, or that are found to contain a captive cervid that shows lesions suggestive of tuberculosis at slaughter, or that are

found to be infected with tuberculosis, or that have been identified as the possible source of a tuberculous captive cervid, or that are newly assembled on premises where a tuberculous herd has been depopulated. This section also prescribed testing to be administered under those circumstances. In most cases, we proposed that a herd would be "quarantined" until the results of tests are known. Quarantine was defined in proposed § 77.8 to mean "a prohibition from any interstate movement, except for interstate movement to slaughter or necropsy in accordance with § 77.17." As proposed, herds described in § 77.16 could also be subject to State quarantines, which could prohibit captive cervids from being moved intrastate.

We are making a change to several places in proposed § 77.16, and throughout the rule, for clarity. Throughout the proposed rule, we referred to determining the tuberculosis status of a captive cervid upon slaughter. For example, in § 77.16(a)(2), we stated "Any herd containing a suspect to an official tuberculosis test must be quarantined until * * * the suspect is slaughtered and found negative for tuberculosis.* * *" As another example, § 77.16(b)(2) contains the phrase, "If upon slaughter or necropsy any reactors exhibit lesions compatible with or suggestive of tuberculosis.* * *" For accuracy, this final rule refers instead to "slaughter inspected" or "inspection at slaughter" (as grammatically appropriate) wherever the rule refers to determining the tuberculosis status of a captive cervid upon slaughter. This was our intention, but we believe the change is necessary to make it clear that inspection of the captive cervid at slaughter is required. Other changes to proposed § 77.16 are discussed below by paragraph.

Section 77.16(a) Herds Containing a Suspect

Proposed § 77.16(a) set forth provisions for testing and interstate movement for herds found to contain a suspect. We are making a clarification to proposed § 77.16(a)(1)(i). Proposed paragraph (a)(1)(i) stated that a captive cervid classified as a suspect on the SCT test must be quarantined until it is retested by the CCT test or the BTB test and found negative for tuberculosis. Proposed paragraph (a)(2), regarding disposition of the remainder of the herd containing a suspect, contained provisions for the remainder of the herd based on results of slaughter inspection or necropsy of the suspect. However, we mistakenly failed to include slaughter as an option for the disposition of suspects

in paragraph (a)(1)(i). We have revised the paragraph in this final rule to state that a captive cervid classified as a suspect on the SCT test must be quarantined until it is slaughtered or retested by the CCT test or the BTB test and found negative for tuberculosis.

We are making an editorial change to proposed § 77.16(a)(1)(i)(B), which concerned the testing of suspects with the BTB test. The paragraph recommended that the sample for the BTB test be taken within 30 days following the SCT test. For accuracy, the paragraph should read "within 30 days following the *injection* for the SCT test." We have made the change in this final rule.

As stated above, proposed § 77.16(a)(1)(i) required that a captive cervid classified as a suspect on the SCT test (the primary test) would have to be quarantined until retested with the CCT test or the BTB test (the supplementary tests) and found negative for tuberculosis (this final rule adds that the suspect may also be slaughtered). Under proposed § 77.16(a)(1)(ii)(B), if a captive cervid is classified as a suspect on the first BTB test following the SCT test, it must be quarantined until retested with a second BTB test 30–60 days after the first BTB test and found negative for tuberculosis. The Committee recommended that we remove the requirement that the suspect be retested with a second BTB test 30–60 days after the first BTB test, and instead require that the suspect be retested with a second BTB test within 60 days following the *injection* for the SCT test and after the first BTB test. Our experience in using the BTB test has shown that results are more accurate if the retest is given within 60 days of the injection for the SCT. Therefore, we have made the change in § 77.16(a)(1)(ii)(B) of this final rule. We have also clarified that the retest must be within 60 days following the *injection* for the SCT test, as opposed to 60 days following observation and palpation of the injection site (which is done approximately 72 hours following the injection of the tuberculin).

Paragraph (a)(2) of proposed § 77.16 concerned quarantine of a herd containing a suspect, and stated that any herd containing a suspect to an official tuberculosis test must be quarantined until the suspect is tested and found negative for tuberculosis or the suspect is slaughtered or necropsied and found negative for tuberculosis. One commenter recommended that we specify that the slaughter or necropsy would include laboratory follow-up. It was our intention that a suspect would only be declared negative for

tuberculosis upon slaughter or necropsy if the necropsy or slaughter inspection were followed by both histopathology and culture of selected tissues.

Therefore, we are revising proposed § 77.16(a)(2) to make it clear that a suspect may only be found negative upon slaughter inspection or necropsy after histopathology and culture of selected tissues.

Section 77.16(e) Herds That Have Received Captive Cervids From an Affected Herd

Paragraph (e) of proposed § 77.16 concerned herds that have received exposed captive cervids from an affected herd, and set forth provisions for release from quarantine of the receiving herd depending on the response of the exposed captive cervids to official tuberculosis tests. The proposed provisions were inconsistent with recommendations made to APHIS by the Committee. We received one comment specifying inconsistencies of the proposed language with Committee recommendations that have been approved by APHIS. In this final rule, we are changing proposed § 77.16(e) to make its provisions consistent with the Committee recommendations, as approved by APHIS. The changes, and our reasons for approving them, are discussed below.

Under proposed § 77.16(e), if a herd has received captive cervids from an affected herd, the captive cervids from the affected herd now in the receiving herd would be considered exposed to tuberculosis. The exposed captive cervids in the receiving herd and the rest of the receiving herd would be quarantined, and the exposed captive cervids in the receiving herd would have to be either slaughtered, necropsied, or tested with the SCT test (the BTB test could be used simultaneously).

Proposed paragraph (e)(1) stated that, if any exposed captive cervid tests positive to the SCT test or the BTB test, it must be classified as a reactor and will be considered as part of the affected herd of origin for further testing purposes. This statement is misleading. The intention of the proposal was that the exposed captive cervids in the receiving herd would always be considered part of the affected herd of origin for quarantine and further testing purposes (but not for herd status classification). However, because exposed captive cervids that test positive to the SCT test or the BTB test are classified as reactors, they must be destroyed and slaughter inspected or necropsied, making the proposed requirement in paragraph (e)(1) that

they be considered part of the affected herd of origin for further testing purposes unnecessary. Therefore, this final rule states instead that only exposed captive cervids in the receiving herd that test negative will be considered as part of the affected herd of origin for further testing purposes. We are adding a phrase to paragraph (e) for clarification to require that any exposed captive cervid in the receiving herd that tests positive to the SCT test or the BTB test must be classified as a reactor and must be slaughter inspected or necropsied.

Proposed § 77.16(e)(1) further stated that, if any exposed captive cervids are classified as reactors, the receiving herd would be subject to the provisions of § 77.16(b), which concern herds that contain a reactor. We are removing this proposed requirement since it is not necessary. The remainder of proposed paragraph (e) sets forth testing protocols for the receiving herd depending on the slaughter inspection or necropsy results from the exposed captive cervids that were classified as reactors. The proposed testing protocols in the remainder of paragraph (e) are discussed below in detail. They are more stringent than the testing protocols in § 77.16(b). Section 77.16(b) concerns herds that are found to contain a captive cervid that is a reactor to an official tuberculosis test but that is not known to be exposed to tuberculosis. Whereas, § 77.16(e) concerns herds that are found to contain an exposed captive cervid that is a reactor to an official tuberculosis test. Thus, paragraph (e) concerns an exposed captive cervid that is a reactor known to have been exposed to tuberculosis and is, therefore, far more likely to actually be infected with tuberculosis. For this reason, the testing requirements for the receiving herd containing an exposed captive cervid that is a reactor are more stringent than for herds containing an animal reacting to a tuberculosis test that is not also an exposed animal (as in § 77.16(b)). Therefore, our proposal in § 77.16(e)(1) that the receiving herd be subject to the provisions of § 77.16(b) is not necessary, since the receiving herd will be subject to the more stringent testing protocols in paragraph (e). Therefore, we are removing the proposed requirement that, if any exposed captive cervids are classified as reactors, the receiving herd will be subject to the provisions of § 77.16(b). We are also adding a statement to § 77.16(b) to clarify that herds that have received captive cervids from an affected herd will be quarantined and tested in accordance with the requirements in § 77.16(e).

Proposed § 77.16(e)(1)(i) stated that, if bovine tuberculosis is confirmed in any of the exposed captive cervids by bacterial isolation of *M. bovis*, the receiving herd will be classified as an affected herd and will be subject to the provisions for affected herds in § 77.16(d). This requirement is consistent with Committee recommendations approved by APHIS, and we are retaining this requirement in § 77.16(e)(1) of this final rule.

Proposed § 77.16(e)(1)(ii) stated that, if any of the exposed captive cervids are found to exhibit lesions compatible with or suggestive of tuberculosis, found by histopathology, without the isolation of *M. bovis*, the receiving herd will be subject to the provisions of § 77.16(c), concerning herds found to have only lesions of tuberculosis. We are removing the requirement that such herds will be subject to § 77.16(c). The Committee recommended, and we agree, that, in cases when the exposed captive cervids are found to exhibit lesions compatible with or suggestive of tuberculosis without the isolation of *M. bovis*, the DTE should be given the authority to determine the appropriate testing schedule. This change is found in § 77.16(e)(2) of this final rule.

Proposed § 77.16(e)(2) required that, if all the exposed captive cervids test negative for tuberculosis, the receiving herd will be released from quarantine, and will return to the herd classification in effect before the herd was quarantined. In addition, we proposed that the receiving herd be retested with the SCT test 1 year after release from quarantine in order for captive cervids from the herd to continue to be moved interstate. The Committee recommended to APHIS that the receiving herd be given a whole herd test and be found negative before it can be released from quarantine. We have approved this recommendation. The official tuberculosis tests for captive cervids were designed to be most effective when used on a whole herd basis, and, as discussed in the preamble to the proposed rule, they are not guaranteed to detect tuberculosis in every infected animal. Even though the exposed captive cervids in a receiving herd test negative for tuberculosis, they may have the disease, and may have transmitted it to the other captive cervids in the receiving herd. Therefore, § 77.16(e)(3) of this final rule requires that, if all the exposed captive cervids in the receiving herd test negative for tuberculosis, the entire receiving herd must still be given a subsequent whole herd test and be found negative for tuberculosis before it may be released from quarantine.

Section 77.16(f) Source Herds

In proposed § 77.16, paragraph (f) concerned herds suspected of being the source of tuberculous captive cervids based on a slaughter traceback investigation.

We are making a clarification in the introductory text of proposed § 77.16(f). The introductory text stated that a herd suspected of being the source of tuberculosis based on a slaughter traceback investigation must be quarantined, and a *whole herd test* must be scheduled. In this final rule, we will only require that a *herd test* be scheduled. This change is necessary because, in the case of suspected source herds, the entire herd would not necessarily be tested initially (the test may include only adult animals 2 years of age and over). On the other hand, if initial testing showed evidence of tuberculosis, the whole herd may have to be tested.

Proposed paragraph (f)(1) stated that, if a herd is positively identified as the source of animals having lesions of tuberculosis and *M. bovis* has been confirmed by bacterial isolation from the slaughter animal, the herd will be considered an affected herd and will be subject to the provisions for affected herds in §§ 77.11(a)(2) and 77.16(d). Comments pointed out that this is inconsistent with recommendations made to APHIS by the Committee and approved by APHIS. The Committee recommended that such a herd not be considered an affected herd, but that we require instead that all captive cervids in such a herd that respond to the SCT test be classified as reactors. If none respond, the herd should be released from quarantine and return to the classification status in effect before the herd was quarantined, unless the DTE determines that additional testing is appropriate to ensure the herd's freedom from tuberculosis.

We agree with these recommendations for the following reasons. Considering such a herd an affected herd would be inconsistent with the level of certainty that can be achieved regarding whether tuberculosis is present in the herd. Identifying a herd as the source of a captive cervid from which *M. bovis* was isolated means there is a high degree of likelihood, but not absolute certainty, that the captive cervid came from that herd. Identification of source herds in the course of a slaughter traceback investigation can, on occasion, be inexact. For example, depending on the practices of the slaughtering establishment, the identification tag of the captive cervid can be occasionally

separated from the carcass before the captive cervid is identified during slaughter as having lesions consistent with tuberculosis. If *M. bovis* is isolated from the lesioned captive cervid, APHIS veterinarians may not be able to definitely determine the specific source herd, but may identify several herds that sent captive cervids to slaughter that day as being possible sources of the tuberculous captive cervid.

In contrast, the proposed quarantine and testing requirements for affected herds in § 77.16(d) are intended for specific herds that are already known to contain, or that have contained, one or more captive cervids infected with *M. bovis*. Here, we know with certainty that a specific herd contains or has contained a captive cervid infected with *M. bovis* because the captive cervid is in that specific herd when it is tested, classified as a reactor by a State or Federal veterinarian, and slaughter inspected or necropsied, with tissue samples sent to the National Veterinary Services Laboratory for bacterial isolation. Under these circumstances, the identification of the captive cervid as originating from a particular herd is definitive.

Furthermore, at the time the proposed rule was published in April 1996, our knowledge of the prevalence level of tuberculosis in the U.S. captive cervid population was not as complete as it is today, and we suspected a higher prevalence level than was in fact the case. We believed that a high prevalence of tuberculosis in captive cervid populations warranted a high degree of scrutiny of herds identified as source herds in slaughter traceback investigations. We now know that the prevalence of tuberculosis in captive cervids is lower than we believed it to be at the time of the proposal. Therefore, we now believe we can reduce some of the testing burden on herds identified as source herds in slaughter traceback investigations because these herds are at a relatively low risk of actually containing or having contained a captive cervid that is positive for *M. bovis*.

The testing schedule required by this final rule for herds identified as the source of tuberculous captive cervids based on a slaughter traceback investigation is appropriate to the level of certainty that tuberculosis has been present in that herd, and we believe it is adequate to detect tuberculosis in the herd if it is present. The more stringent testing schedule that is required for affected herds is not necessary for source herds, since, as explained above, the level of certainty that identified source herds are in fact the source of

tuberculous captive cervids is not as definitive as with affected herds. Therefore, we have removed the proposed requirement that, if a herd is identified as the source of a captive cervid having lesions of tuberculosis and *M. bovis* is isolated from the captive cervid, the herd will be considered an affected herd. In this final rule, § 77.16(f)(1) requires instead that all captive cervids in such a herd that respond to the SCT test be classified as reactors. If none respond, the herd may be released from quarantine and returned to the classification status in effect before the herd was quarantined, unless the DTE determines that additional testing is appropriate to ensure the herd's freedom from tuberculosis. In addition, in order to represent the identification of source herds accurately, we are removing the phrase "positively identified" from proposed § 77.16(f) and referring instead to herds "identified" as source herds.

In the proposed rule, § 77.16(f)(2) stated that, if a herd is identified as the source of captive cervids that exhibit lesions compatible with or suggestive of tuberculosis, found by histopathology, without the isolation of *M. bovis*, the herd will be subject to the provisions of § 77.16(c), concerning herds found to have only lesions of tuberculosis. The Committee recommended that we not require such a herd to be subject to the provisions of § 77.16(c), but that we require instead that captive cervids in such a herd that respond to the SCT test be classified as suspects and supplemental tests be applied. As discussed above with respect to paragraph (f)(1), we agree that the proposed testing schedule is not necessary in light of the level of certainty that a lesioned animal originated from a specific herd. This situation warrants different testing and quarantine standards for source herds than we require for herds in which the origin of the animal is known with certainty. Therefore, paragraph (f)(2) is changed in this final rule to reflect this situation.

In conjunction with the change to § 77.16(f)(1), we are also changing the proposed definition of affected herd. The proposed rule defined an affected herd as a herd of captive cervids that contains, or that has been positively identified as the source of, one or more captive cervids infected with *M. bovis* and that has not tested negative to the required tests for release from quarantine. The proposed definition included the phrase "or that has been positively identified as the source of" to be consistent with proposed § 77.16(f)(1). As already explained,

because of a difference in the level of certainty, we believe it is inappropriate to consider an identified source herd exactly the same as an affected herd. The definition for an affected herd that is more appropriate is a herd that contains or that has contained one or more captive cervids infected with *M. bovis* and that has not passed the required tests for release from quarantine. We believe this definition is more accurate than the proposed definition. This definition was also recommended to APHIS by the Committee. Therefore, this final rule defines an affected herd, with some clarifications, as follows:

Affected herd. A herd of captive cervids that contains or that has contained one or more captive cervids infected with *Mycobacterium bovis* (determined by bacterial isolation of *M. bovis*) and that has not tested negative to the three whole herd tests as prescribed in § 77.16(d) of this subpart.

Section 77.16(g) Newly Assembled Herds

One commenter pointed out that we did not include a provision for determining the herd classification status of a newly assembled herd. The Committee recommended that we classify newly assembled herds as follows: A newly assembled herd will be classified as having the herd status of the herd from which the captive cervids originated. If the herd is assembled from captive cervids from more than one herd, it will be classified as having the herd status of the originating herd with the lowest status. A newly assembled herd will also assume the testing schedule of the herd status it is given. Captive cervids in the herd must have no exposure to captive cervids from a herd of lesser status than the herd of origin determining the status of the newly assembled herd. We agree with this recommendation.

Proposed § 77.16(g) established testing requirements for herds newly assembled on premises where a tuberculous herd has been depopulated. In this final rule, we have put these provisions in a new paragraph (g)(2), and have added the provisions described above for any newly assembled herd in a new paragraph (g)(1). We are also adding in paragraph (g)(1) that captive cervids in the newly assembled herd must have no exposure to any tuberculous livestock.

Section 77.17 Procedures for and Interstate Movement to Necropsy and Slaughter

We are changing § 77.17(b)(1). This paragraph contains requirements for

moving reactors, suspects, and exposed captive cervids interstate to necropsy or slaughter. One requirement is that the captive cervid be accompanied by a permit, and proposed paragraph (b)(1) listed the information that must appear on the permit, including the animal's identification, the owner's name and address, and the purpose of the movement. We neglected to include the classification of the captive cervid (i.e., reactor, suspect, or exposed) on the list of information that must appear on the permit. It is important that this information be on the permit for public health reasons so that meat inspectors at the slaughtering establishment will be informed and know how to inspect and dispose of the carcass. We have added this to paragraph (b)(1) in this final rule.

Responses to Comments Not Resulting in Changes to Proposed Rule

In the preamble to the proposal, we said that we modeled the proposed subpart B for captive cervids after the regulations in part 77 for cattle and bison, and after the UMR for Tuberculosis for cattle and bison. One commenter stated that it is inappropriate and misguided to apply science developed for cattle to deer. Two other commenters said that the SCT and CCT tests require considerable handling of the animal being tested and result in stress to captive cervids. The commenters said that these tests were not designed for cervids and have been less than adequate.

We are not making any changes in response to these comments. The SCT and CCT tests are basic tuberculin tests used to detect tuberculosis in all species, including humans. While it is true that the SCT and CCT tests in particular were originally developed for use on cattle and bison, the proposed provisions for applying these tests to cervids have been modified to account for the way cervids respond to the tests. Further, we proposed to apply these testing procedures only after considerable experience using these tests on captive cervids had shown that they were effective in determining the tuberculosis status of captive cervids.

We agree with commenters that the SCT and CCT tests result in stress to captive cervids because they require considerable handling of the animals. Some captive cervid owners prefer to use the BTB test for this reason, as the BTB test only requires a single handling of the captive cervid to obtain a blood sample. This final rule does include the option for using the BTB test with captive cervids in place of the CCT test as a supplement to the SCT test.

Section 77.11(b) describes the use of the CCT test, and states, in part, that the "CCT test may be used in affected herds only after the herd has tested negative to two whole herd SCT tests." One commenter asked if the CCT test could be used as a *primary test* in affected herds after having tested negative to two whole herd SCT tests. Our response is that the CCT test is always a secondary test and cannot be used as a primary test. The scientific basis for interpreting the CCT test requires that the CCT test be performed following an initial injection of bovine tuberculin for the SCT test. If bovine tuberculin had not already been introduced into the captive cervid's system, the CCT test could cause a different and unpredictable response. Under the conditions described above, an affected herd is first tested with a primary test (the SCT test) at least twice before a secondary test (the CCT test) may be applied. It is necessary to test the herd with the SCT test at least twice because, as discussed below, the SCT test is more sensitive than the CCT test. Using the SCT test at least twice before using the CCT test will give the most accurate assurance that tuberculosis is detected in the herd if it is present.

In proposed § 77.11, paragraphs (b)(2), (b)(3), and (b)(4) set forth the circumstances under which a captive cervid tested with the CCT test *must be* classified as negative, a suspect, or a reactor. One commenter said that the phrase "must be classified" should be changed to "should be classified" in each of these paragraphs. The commenter did not state a reason for this suggestion, but we assume it is intended to give the testing veterinarian more flexibility if some additional knowledge (such as testing history of the herd or whether or not the captive cervid may have been exposed to a tuberculous animal) would make the testing veterinarian judge that the captive cervid should be classified differently. We are not making any changes in response to this comment. Paragraphs (b)(3) and (b)(4), concerning suspect and reactor classification, already contain a provision for the testing veterinarian to use his or her judgment in classifying a captive cervid. Paragraph (b)(2), concerning negative classification, does not contain any such provision. We do not believe any deviation from the classification criteria would be appropriate in classifying a captive cervid as negative.

One commenter claimed that there is no data to support a statement in the preamble to the proposed rule that the SCT test is more sensitive than the CCT test or the BTB test. The commenter

went on to say that, with its lack of specificity, the SCT test is clearly ineffective unless used in conjunction with the CCT test or the BTB test. We are making no changes based on this comment. The commenter is referring to a discussion in the preamble to the proposed rule that explained why a captive cervid from a herd of unknown status that responds to the SCT test (the primary test used) should be classified as a suspect until retested with a supplementary test (either the CCT test or the BTB test). We explained that testing with a supplementary test would be necessary because the SCT test is more sensitive. We believe the commenter misunderstood our use of the word sensitive. What we intended to convey was that, while the SCT test is more likely than other tuberculosis tests to respond to *M. bovis* in a captive cervid, it is also more likely to respond to other mycobacterial diseases or immune stimulants that are not *M. bovis*. So, while the SCT test is more sensitive than the CCT or the BTB tests, it is also, as the commenter points out, less specific. This can sometimes lead to "false positive" reactions when using the SCT test. It is for this reason that, in herds of unknown tuberculous status, this final rule requires the use of the SCT test in conjunction with the CCT test or the BTB test to determine whether or not a captive cervid should be classified as a reactor.

Another commenter said that, due to the admitted sensitivity of the SCT test, captive cervids responding to the SCT test should not be classified as reactors until additional testing is accomplished. We agree in most cases. This final rule requires that captive cervids in herds of unknown tuberculous status that respond to the SCT test be classified as suspects until they are retested with a supplementary test. However, captive cervids in affected herds responding to the SCT test must be classified as reactors. As we explained in the preamble to the proposed rule, this deviation is necessary when testing a captive cervid in an affected herd because it is known that the captive cervid has been exposed to tuberculosis. Therefore, it is more likely that a response to the SCT test indicates an animal with tuberculosis. This rule also allows testing veterinarians the discretion to classify a captive cervid as a reactor based on an SCT test response if the veterinarian determines that is appropriate. If the testing veterinarian is a designated accredited veterinarian, we will require that he or she obtain the concurrence of a DTE to classify a captive cervid as a reactor based on an

SCT test response. Allowing this discretion is necessary because the circumstances under which an animal is being tested (for example, captive cervids from high-risk herds, such as suspected source herds or a herd recently released from quarantine for tuberculosis) may make it more likely that a response to the SCT test indicates an animal with tuberculosis.

The commenter was further concerned that classifying a captive cervid as a reactor based on a response to the SCT test will result in unnecessary quarantines, tracebacks, and slaughter of reactors and other captive cervids in the herd. We have acknowledged the possibility of false positives when using the SCT test. As explained previously, it is for this reason that, under routine circumstances, supplemental tests will be used. We believe, however, that in herds where there is a higher likelihood of captive cervids in the herd having tuberculosis (such as affected herds), the risk of false positives is outweighed by the risk of not immediately identifying captive cervids that have tuberculosis. Therefore, we are making no changes to the rule based on this comment.

One commenter said that the assertion in the proposed rule that the SCT and the CCT tests provide results as reliable as the BTB test "has been proven to be unfounded due to incidence of false positives." Of the three official tuberculosis tests, the SCT test is the most sensitive. The disadvantage of this sensitivity is that it can result in false positives. The advantage of this sensitivity is that, while we are more likely to get false positives, we are also more likely to find all the captive cervids that actually have tuberculosis. Some of these tuberculous captive cervids would not react to a less sensitive test. Because of the possibility of false positives, however, supplemental tests will normally be used. The CCT and the BTB tests were proposed to be used as supplemental tests. When we stated in the proposed rule that the SCT and CCT tests provide results "as reliable" as the BTB test, we meant that using the BTB test as a supplemental test will not result in finding more captive cervids in the herd with tuberculosis than we would find using the SCT and CCT tests. Because results from supplementing the SCT test with the CCT test or the BTB test are equally reliable, we proposed to give captive cervid owners the choice of using either the CCT or the BTB tests as supplemental tests. The incidence of false positives on the SCT test is not relative to this decision, and the high degree of sensitivity that causes the false

positives is crucial to the SCT test's effectiveness. Therefore, we are not making any changes to the rule in response to this comment.

One commenter expressed concern that the proposed interval between a positive SCT test and a CCT test is not long enough, and that a loss of sensitivity on the CCT will result. We proposed that captive cervids classified as suspects on the SCT test must be retested with the CCT test either within 10 days following the SCT test or not until 90 days after the SCT test. The commenter said that USDA's own data reflects that testing with the CCT test too soon after testing with the SCT test (within 10 days) reduces the effectiveness of the testing program.

We are making no changes to the proposed rule based on this comment. The commenter is correct that the injection of the USDA bovis tuberculin for the SCT test suppresses the animal's ability to respond to subsequent tuberculin tests administered prior to a 90 day waiting period. After 90 days, the suppressing effect of the tuberculin is markedly reduced, and responses to subsequent tuberculin tests are stronger and easier to read. However, prior to 10 days following application of the SCT test, a captive cervid will not yet have become so desensitized that a subsequent test may not be applied. Responses may not be as strong, but they will be adequately strong to be considered reliable. Further, the provisions in this final rule under which the CCT test is to be applied and interpreted are appropriate for testing either within 10 days of the SCT test or at least 90 days after.

The proposed rule provided that, with two exceptions, official tuberculosis tests may only be given by a veterinarian employed full-time by the State in which the test is administered or by a veterinarian employed full-time by USDA (as discussed previously in this document, we are removing the "full-time" requirement). One exception to this provision is that a designated accredited veterinarian may conduct the SCT test for routine testing of herds of unknown tuberculous status, and any accredited veterinarian may conduct the BTB test. One commenter said that these requirements are unnecessarily restrictive, and that any licensed veterinarian should be able to administer a tuberculosis test and classify a captive cervid based on the results, with test results confirmed in consultation with an official State veterinarian. We are not making any changes to the proposed rule based on this comment. Classifying an animal as potentially having tuberculosis could

necessitate further serious regulatory actions, including quarantine, traceback, or the slaughter of affected animals. We believe that, considering the consequences to a herd owner of having tuberculin responding animals in a herd, it is imperative that the testing and classifying veterinarian be as knowledgeable and objective as possible. Allowing any licensed veterinarian to test and classify animals could result in situations where there may be a conflict of interest, and would also reduce oversight of the eradication program by regulatory officials.

Our proposal included a definition for "depopulate" to mean the destruction of all captive cervids in a herd by slaughter or by death otherwise. One commenter said we should revise the definition for "depopulate" to include the slaughter of all livestock in the herd other than captive cervids that are deemed by the tuberculosis epidemiologist to be exposed. We are making no changes based on this comment. At the present time, to ensure success of the tuberculosis eradication program and to provide incentive for owners to depopulate an entire affected herd, the regulations require that all livestock in a herd must be depopulated if the owner wishes to receive indemnity for the cattle, bison, or captive cervids destroyed (see 9 CFR part 50). We do not at present have a tuberculosis eradication or indemnity program for species other than cattle, bison, and captive cervids. Therefore, we do not currently believe it is appropriate to require in part 77 that all livestock in a herd must be depopulated.

One commenter had questions about what kinds of cervid herds would be considered captive. The proposed rule defined a captive cervid as a cervid "raised or maintained in captivity for the production of meat and other agricultural products, for sport, or for exhibition. * * *" The commenter says that in some areas of the United States white-tailed deer are enclosed by deer-proof fences as a wildlife management tool. In Texas, for example, over 1 million acres of rangeland are enclosed by deer-proof fences, and the enclosed deer herds are defined by Texas statute as wild deer populations. The commenter says it is ambiguous whether or not such enclosed deer herds would be considered captive under our definition of captive cervid. Similarly, the commenter also said that State and Federal fish and wildlife agencies sometimes restore wild cervid populations through interstate trap and transplant operations. The commenter asked if it is our intent to include such operations under the scope of this rule.

We do not intend to include deer populations enclosed for wildlife management purposes within the scope of this rule. Wild deer enclosed for management purposes are obviously not enclosed for the purpose of using them for exhibition or as a commodity, but to keep them out of grazing land, crop fields, or developed areas. We do not consider such cervid herds to be captive. Neither do we intend to include deer that are part of any other wildlife management projects under the scope of this rule. Therefore, we have not made any changes in response to this comment.

We proposed that, to move a captive cervid interstate for slaughter or necropsy, a permit for such movement must be issued by a representative of APHIS, a State representative, or an accredited veterinarian. We also proposed that captive cervids moving interstate for any reason other than slaughter or necropsy must be accompanied by a certificate for such movement issued by a State or Federal animal health official or an accredited veterinarian. One commenter said that in some States the State fish and wildlife agency has responsibility for regulating captive cervid herds, and not the State department of agriculture. The commenter asked which State agency would be responsible for issuing interstate movement permits and certificates under the proposed rule. The commenter is concerned that no unfunded mandates be placed on State fish and wildlife agencies.

Whichever agency is responsible for management of captive cervid herds in a State will be the cooperating State agency under this rule responsible for issuing permits and certificates when necessary for the interstate movement of captive cervids. The costs for issuing such permits and certificates are minimal. Therefore, we will not provide any funds to the States for this service. In most cases, the State veterinarian (regardless of what State agency the veterinarian works for) will be the primary cooperator with APHIS under this program. The State veterinarian would already be cooperating with APHIS in conducting the interstate movement program for tuberculosis in cattle and bison. Thus, the States should not encounter significant additional expenses because of this program.

One commenter asked why we did not propose to regulate wild cervids as well as captive cervids, if tuberculosis is truly a threat. We are concerned, along with the commenter, that tuberculosis can be transmitted from captive cervids to wild cervids and vice versa. Because of our concern, we are assisting State

wildlife agencies in monitoring tuberculosis in wild animal populations and in developing possible methods for controlling tuberculosis in those populations. However, it is not feasible at this time for us to develop a tuberculosis eradication program for wild cervids or other wild animals similar to those proposed for captive cervids. We have made no changes to the rule in response to this comment.

Another commenter asked why we did not propose to regulate bovidae other than bison (such as African and Asian antelope, American pronghorn, and various species of wild sheep and goats) for tuberculosis. We are making no changes based on this comment. We have considered regulating bovidae other than cattle and bison for tuberculosis. However, at this time, we are focusing on the species of primary epidemiologic importance. Cattle, bison, and captive cervids have the most impact on the spread of tuberculosis among livestock. We recognize that, especially in mixed herds, bovidae other than cattle and bison are capable of transmitting the disease to cattle, bison, and captive cervids, and this is of concern to us. If, in the future, we decide to regulate other livestock for tuberculosis, we will publish a proposed rule in the **Federal Register**.

One commenter was concerned with our explanation in the preamble to the proposed rule regarding why we proposed regulations for a monitored herd status for captive cervid herds. We said in the preamble that the provisions for monitored herds have been included mainly to accommodate very large cervid herds raised under range conditions. The commenter said that this explanation could be construed to mean that monitored herds would include wild cervid herds. We are making no changes to the regulation based on this comment. The term "monitored herd" is defined in § 77.8, "Definitions," to mean: "A herd on which identification records are maintained on *captive* cervids inspected for tuberculosis at an approved slaughtering establishment or an approved diagnostic laboratory, and which meets the standards set forth in § 77.14 of this subpart" (emphasis added). We believe that this definition makes it clear that only captive cervid herds will be eligible to be considered monitored herds. Further, as stated previously in this document, we have added the word "captive" before the word "cervid" each time it appears throughout the regulations. We believe this will be sufficient to ensure that it is clear that the rule, including the

provisions for monitored herds, only applies to captive cervids.

In the Regulatory Flexibility Analysis portion of the proposed rule, we stated that the cost of routine testing with the SCT test will be borne by the owner of the captive cervid herd. We estimated that this will cost about \$25–30 per cervid, based on a herd of about 200 captive cervids over 6 months of age. One commenter, in regard to this, stated that the public should bear the cost of this test, and not the individual herd owner. APHIS does in fact provide the tuberculin free to private veterinarians. By doing this, veterinarians do not have to charge herd owners for the cost of the tuberculin. APHIS also pays the cost of all testing for high-risk herds (for example, affected herds and herds that have received a captive cervid from an affected herd). Further, States usually provide cost-free testing when the testing is required by the State for surveillance purposes. Our intent is that owners of captive cervids pay for routine testing that allows them to move their animals in interstate commerce.

Another commenter disputed our estimate of the cost of routine testing at \$25–\$30 per cervid. We explained in the analysis that approximately two-fifths of this estimated cost would be for additional labor needed to assist in testing (rounding up the herd, holding animals for injection, etc.), and three-fifths of this estimate would be for a veterinarian's professional services. The commenter said that veterinarians charge only about \$2 per head to test cattle for tuberculosis, and do not charge significantly more to test captive cervids (our estimate assumed a minimum charge of \$15—three-fifths of \$25). The commenter also said that roundup and handling costs for captive cervids are not normally more than the costs for such labor when testing cattle, and asked that we revise the analysis to state that testing of captive cervids for tuberculosis will be no more expensive than testing of cattle. The purpose of our discussion of testing costs in the proposed rule was to determine whether or not the rule would have a significant economic impact on a substantial number of small entities. Analysis of this is required under the Regulatory Flexibility Act. Based in part on our estimate of testing costs, we determined that the proposed rule would not have a significant economic impact on a substantial number of small entities. We believe that in some circumstances testing and labor costs will be greater than what the commenter estimates. Even so, there will be no change in our determination of no significant economic impact if testing costs prove

to be lower than we estimated. Therefore, we have made no changes to the analysis in response to this comment.

In the proposed rule, we stated that zoological parks that are accredited by the American Zoo and Aquarium Association (AZA) and that have captive cervids are exempt from the proposed regulations when the captive cervids are moved directly interstate between AZA member facilities. One commenter said that exempting AZA member facilities from the regulations means that AZA members are held to a standard lower than those established for the agriculture industry, even though there exists an equal or greater risk of spreading the disease between such facilities. We are making no changes based on this comment. As we stated in the proposed rule, the AZA holds its member facilities to a high animal health standard. All member facilities monitor their animals for tuberculosis and other diseases, and interstate movement between the parks would not involve contact with animals that are not in the respective parks. Given these standardized precautions, we believe that movement of captive cervids between AZA member facilities poses no more risk of spreading tuberculosis than if the captive cervids were moving under the provisions of this rule. However, zoos that are not AZA members will be able to move captive cervids or receive captive cervids only in accordance with the provisions of this rule. Likewise, zoos that are AZA members will be able to move captive cervids to a non-AZA facility only in accordance with the provisions of this final rule.

The proposed rule provided that all captive cervids in a herd that are eligible for testing must test negative to at least three consecutive official tuberculosis tests conducted at 9–15 month intervals in order for the herd to become an accredited herd. The UMR for cattle and bison requires that, to achieve accredited herd status, all cattle and bison in the herd must test negative to at least two consecutive official tuberculosis tests. Several commenters said that requiring three tests for captive cervid herd accreditation is an unfair burden on captive cervid owners, when cattle and bison herds only require two tests for accreditation. We are making no changes based on this comment. We stated in the preamble to the proposed rule that livestock industry associations have requested that we require three official tuberculosis tests to qualify a captive cervid herd as an accredited herd because of a lack of testing history and the present seriousness of the

tuberculosis situation concerning captive cervids. One commenter said that, since a greater percentage of captive cervids are currently tested than cattle, the regulations should be relaxed as data is accumulated. This seems reasonable. However, we believe that we must continue to be more restrictive until data establishes that the risk of transmission of tuberculosis in captive cervids is at a level equivalent to that in cattle populations. Bovine tuberculosis can have an incubation period of a decade or more. Captive cervids have a life span substantially longer than cattle or bison (captive cervids can live on average 30 years, while the life span for cattle averages only 6 to 7 years). Further, our surveillance of captive cervids is not adequately developed to always detect tuberculosis herds in a timely manner. These factors will extend the period needed to establish data on realistic risk comparisons between captive cervids and cattle and bison.

One commenter said that the proposal did not include a provision for “surveyed herd status,” which the commenter said was recommended by the Committee for inclusion in the addendum. We are making no changes based on this comment. The Committee recommended that we add an additional herd classification, surveyed herds, to the herd accreditation program. The recommendation called for surveyed herds to be classified based only on records of captive cervids tested for interstate movement. As discussed previously, we have incorporated this concept into the provisions for achieving monitored herd status by allowing interstate movement testing to be counted towards meeting the requirement for monitored herd status.

To maintain monitored herd status, we proposed that the person, firm, or corporation responsible for management of the herd must submit an annual report to cooperating State or Federal animal health officials to give the number of captive cervids currently in the herd and the number of captive cervids from the herd over 1 year of age identified, slaughtered, and inspected at an approved slaughtering establishment or necropsied at an approved diagnostic laboratory. One commenter asked if APHIS will provide the forms for the reporting of this information. We will not. It will be the responsibility of the person, firm, or corporation responsible for the management of the monitored herd to maintain records and submit the annual report to State or Federal animal health officials. APHIS does not currently have a special form for the reporting of this information. However,

we recognize the need for uniform reporting, and are considering guidelines to clarify the recordkeeping requirements in order to ensure that consistent information is maintained on monitored herds.

One commenter said that the proposed testing schedules will result in undue stress and death of captive cervids. The commenter claimed that deaths due to stress from testing could exceed problems caused by tuberculosis. We are not making any changes based on this comment. We are aware of the stress to captive cervids caused by handling and testing. Captive cervids are much more excitable animals than cattle or bison and can be difficult to handle. They are also more fragile than many other livestock and, in particular, can suffer bone injuries when being handled. However, we do not believe that deaths due to stress from testing could possibly exceed the problems caused by tuberculosis if the disease is left unchecked. Left unrestricted, tuberculosis would assuredly destroy the captive cervid industry in the United States. Captive cervids also have been known to transmit tuberculosis to cattle and other livestock, and to humans. We believe the importance of controlling tuberculosis in the captive cervid population far outweighs any risk of injuring or causing the death of a very limited number of animals due to handling during testing. The testing schedules in this final rule are necessary to ensure detection of tuberculosis in captive cervid herds.

In the preamble to the proposed rule, we explained that, at this time, the tuberculosis status of captive cervids will not affect the tuberculosis status of a State (as it does in the tuberculosis eradication program for cattle and bison). One commenter asked that we confirm this in the rule itself. We are making no changes based on this comment. The proposed rule contains no provisions for changing the tuberculosis status of a State in relation to the tuberculosis status of captive cervid herds. We do not believe that it is necessary to state in the rule that the tuberculosis status of a captive cervid herd will not affect the tuberculosis status of a State. We believe it is clear in part 77 that the status of a State is dependent on the incidence of tuberculosis in cattle and bison herds and not in captive cervid herds, unless tuberculosis is found in a herd of captive cervids also containing cattle or bison. Further, as we also discussed in the preamble to the proposed rule, the regulations we proposed will be subject to future review. We anticipate that, in

the near future, we will revise part 77 to make the tuberculosis status of captive cervids or other livestock affect the tuberculosis status of a State, as it currently does with cattle and bison. Until that time, a State's tuberculosis status will continue to be based on the presence or absence of tuberculosis in cattle or bison in herds within the State.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Breeding and production of captive deer, elk, and other *Cervidae* (cervids) has taken place in the United States since at least the 1930's. The first owners were ranchers who kept these animals as novelties. While captive cervids continue to be raised for their aesthetic value, most herds also earn income for their owners in the venison and antler markets. U.S. production of captive cervids has increased over the decades and is expected to continue to grow. In a 1990 survey of existing herd owners, over 70 percent of the respondents planned to expand their operations; only 3 percent intended to decrease or discontinue production.¹ The industry's combined sales probably exceed \$10 million. Most captive cervid holdings are either small businesses or are parts of larger agricultural enterprises.

There are more than 1,600 captive cervid (elk and deer) producers in the United States today, raising about 250,000 head of captive cervids. Holdings vary in size and degree of commercialization, with most producers relying on other sources of income, particularly dairy farming or cattle ranching, for their livelihoods. Elk and deer farming yield a higher return on investment than do most other types of livestock enterprises, but also require larger initial investment and operating costs.

Industry wide, elk producers are building up their herds, with almost all newborns sold as breeding stock. A heifer elk is worth about \$3,500. Annual income is also earned from the sale of

antlers cut in the velvet stage of growth. The antlers sell for about \$70 per pound. A bull elk can produce up to 18 pounds each year, for more than 10 years. Thus, a gross income of \$1200–1300 can be earned per year from one bull elk.

The value per animal for deer is lower than for elk. Currently, good quality fallow does are sold for about \$400 per head, and slaughter bucks can be sold for \$150–200 each. Fallow does will produce one offspring per year, valued at about \$200 per head.

This rule will include captive cervids in the National Cooperative State/Federal Bovine Tuberculosis Eradication Program. APHIS considered the alternative of not adding provisions concerning captive cervids to this program. Under this alternative, the interstate movement of captive cervids would remain unregulated, increasing the risk for further spread of tuberculosis from captive cervids to cattle, bison, and other livestock, as well as to wildlife and humans. Therefore, this alternative was rejected.

Under this rule, producers of captive cervids will bear certain costs of testing the animals. Routine testing with the SCT test will be paid for by the owner of the herd, and should cost about \$25–30 per cervid, based on a herd of about 200 captive cervids over 6 months of age. Approximately two-fifths of this cost will be for additional labor needed to assist in the testing (rounding up the herd, holding animals for injection, etc.), and three-fifths of the cost will be for a veterinarian's professional services. Owners will not be responsible for the cost of the CCT test, retesting affected herds with the SCT test, or any other testing with the SCT test other than routine testing. Captive cervid owners will also bear costs of the BTB test (approximately \$100 per cervid) if they desire to use this test. However, the BTB test is only an option under this rule, and will not be required.

Individual owners will benefit from the regulations by having a way to ensure that only tuberculosis-free captive cervids are added to their herds, and in the long run, by a decrease in the incidence of tuberculosis. Also, current tuberculosis testing and transport restrictions for captive cervids vary by State. National disease control standards, effective as a result of this rule, will facilitate interstate trade.

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

The information or recordkeeping requirements in the proposed rule were submitted for approval to OMB and were approved. The assigned OMB control number is 0579–0084. This final rule contains changes that affect the approved requirements. The estimated total annual burden on respondents for the information and recordkeeping requirements in the proposed rule was 557 hours. This final rule adds a requirement that persons wishing to use identification methods for cervids other than official eartags must send a written request for approval to APHIS (see § 77.10(c) of this final rule). This final rule also adds a requirement that the testing laboratory must include a summary of supporting data with BTB test reports, and that full supporting data must be provided on a case-by-case basis at the request of cooperating State and Federal animal health officials (see § 77.10(d)(2) of this final rule). The new requirements add an additional 2 hours to the total annual burden. This final rule also removes the proposed requirement that natural additions under of 1 year of age must be individually identified by an official eartag and recorded in the test report as members of the herd at the time of the herd test (this requirement appeared in § 77.10(f) of the proposed rule). The removal of this requirement reduces the total annual burden by 46 hours. These three changes result in a net reduction of 44 hours from the estimated total annual burden in the proposed rule.

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the new information collection or recordkeeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its

¹ Mjelde, James. "Exotic Ungulate Production: Summary of Survey Results." Department of Agricultural Economics, Texas A&M University.

decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control numbers or, if approval is denied, providing notice of what action we plan to take.

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.

9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR parts 50, 77, and 91 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 371.2(d).

2. In § 50.1, the definition for *Captive cervid* is revised to read as set forth below.

§ 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. 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.

* * * * *

PART 77—TUBERCULOSIS

3. 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 371.2(d).

4. In part 77, §§ 77.1 through 77.6 are designated as subpart A and a subpart heading, “Subpart A—Cattle and Bison”, is added before § 77.1.

5. Section § 77.1 is amended as follows:

a. The introductory sentence is amended by removing the word “part” and adding the word “subpart” in its place.

b. The definition of *Permit* is amended by removing the word “animals” the first time it appears and adding the words “cattle or bison” in its place, and by removing the word “part” each time it appears and adding the word “subpart” in its place.

c. The definition of *Transportation document* is amended by adding the phrase “of cattle or bison” immediately after “interstate movement”.

d. The definitions for *Accredited veterinarian* and *Uniform Methods and Rules—Bovine Tuberculosis Eradication* are revised to read as set forth below.

§ 77.1 Definitions.

* * * * *

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this subchapter to perform functions specified in subchapters B, C, and D of this chapter.

* * * * *

Uniform Methods and Rules—Bovine Tuberculosis Eradication. Uniform methods and rules for eradicating bovine tuberculosis in the United States, adopted by the United States Animal Health Association (USAHA) in October, 1988, and approved by APHIS on February 3, 1989. The *Uniform Methods and Rules—Bovine Tuberculosis Eradication*, February 3, 1989 Edition were approved for incorporation by reference into the Code of Federal Regulations by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.¹

* * * * *

§ 77.3 [Amended]

5a. In § 77.3, footnote 3 is redesignated as footnote 2.

§ 77.6 [Amended]

6. In § 77.6, in the first sentence, the word “part” is removed and the word “subpart” is added in its place.

7. A new § 77.7 is added to subpart A to read as follows:

§ 77.7 Cleaning and disinfection of premises, conveyances, and materials.

All conveyances and associated equipment, premises, and structures that are used for receiving, holding, shipping, loading, unloading, and delivering cattle or bison in connection with their interstate movement and that are determined by cooperating State and

Federal animal health officials to be contaminated because of occupation or use by tuberculous or reactor livestock must be cleaned and disinfected under the supervision of the cooperating State or Federal animal health officials. Such cleaning and disinfecting must be done in accordance with procedures approved by the cooperating State or Federal animal health officials. Cleaning and disinfection must be completed before the premises, conveyances, or materials may again be used to convey, hold, or in any way come in contact with any livestock.

8. In part 77, a new subpart B is added following § 77.7 to read as follows:

Subpart B—Captive Cervids

Sec.

77.8 Definitions.

77.9 General restrictions.

77.10 Testing procedures for tuberculosis in captive cervids.

77.11 Official tuberculosis tests.

77.12 Interstate movement from accredited herds.

77.13 Interstate movement from qualified herds.

77.14 Interstate movement from monitored herds.

77.15 Interstate movement from unclassified herds.

77.16 Other interstate movements.

77.17 Procedures for and interstate movement to necropsy and slaughter.

77.18 Cleaning and disinfection of premises, conveyances, and materials.

Subpart B—Captive Cervids

§ 77.8 Definitions.

Accredited herd. A herd of captive cervids that has tested negative to at least three consecutive official tuberculosis tests of all eligible captive cervids in accordance with § 77.10(f), and that meets the standards set forth in § 77.12 of this subpart. The tests must be conducted at 9–15 month intervals.

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of subchapter J to perform functions specified in subchapters B, C, and D of this chapter.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Affected herd. A herd of captive cervids that contains or that has contained one or more captive cervids infected with *Mycobacterium bovis* (determined by bacterial isolation of *M. bovis*) and that has not tested negative to the three whole herd tests as prescribed in § 77.16(d) of this subpart.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

¹ Copies may be obtained from the National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, Maryland 20737–1231.

Approved slaughtering establishment. A slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a slaughtering establishment that has inspection by a State inspector at the time of slaughter.

Blood tuberculosis (BTB) test. A supplemental test for tuberculosis in cervids.

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. 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.

Classified herd. An accredited, qualified, or monitored herd.

Comparative cervical tuberculin (CCT) test. The intradermal injection of biologically balanced USDA bovine PPD tuberculin and avian PPD tuberculin at separate sites in the mid-cervical area to determine the probable presence of bovine tuberculosis (*M. bovis*) by comparing the response of the two tuberculins at 72 hours (plus or minus 6 hours) following injection.

Cooperating State and Federal animal health officials. The State and Federal animal health officials responsible for overseeing and implementing the National Cooperative State/Federal Bovine Tuberculosis Eradication Program.

Depopulate. To destroy all captive cervids in a herd by slaughter or by death otherwise.

Designated accredited veterinarian. An accredited veterinarian who is trained and approved by cooperating State and Federal animal health officials to conduct the single cervical tuberculin (SCT) test on captive cervids.

Designated tuberculosis epidemiologist (DTE). An epidemiologist designated by APHIS to make decisions concerning the use and interpretation of diagnostic tests and the management of affected herds under this subpart.

Exposed captive cervid. Any captive cervid that has been exposed to tuberculosis by reason of associating with captive cervids, cattle, bison, or other livestock from which *M. bovis* has been isolated.

Herd. A group of captive cervids or a group of captive cervids and other livestock maintained on common ground, or two or more groups of captive cervids or captive cervids and

other livestock under common ownership or supervision that are geographically separated but that have movement of animals between groups without regard to health status. (A group means one or more animals.)

Livestock. Cattle, bison, 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.

Monitored herd. A herd on which identification records are maintained on captive cervids inspected for tuberculosis at an approved slaughtering establishment or an approved diagnostic laboratory and on captive cervids tested for tuberculosis in accordance with interstate movement requirements, and which meets the standards set forth in § 77.14.

Moved directly. Moved without stopping or unloading at livestock assembly points of any type. Captive cervids being moved directly may be unloaded from the means of conveyance while en route only if they are isolated so that they cannot mingle with any livestock other than those with which they are being shipped.

Negative. Showing no response to the SCT test or the CCT test, classified by the testing laboratory as "avian" or "negative" on the BTB test, or classified negative for tuberculosis by the testing veterinarian based upon history, supplemental tests, examination of the carcass, and histopathology and culture of selected tissues.

No gross lesions (NGL). Having no visible lesions indicative of bovine tuberculosis detected upon necropsy or slaughter inspection.

Official eartag. An eartag approved by the Administrator as providing unique identification for each individual captive cervid by conforming to the alpha-numeric National Uniform Eartagging System.

Official tuberculosis test. Any of the following tests for bovine tuberculosis in captive cervids, applied and reported in accordance with this subpart:

- (1) The single cervical tuberculin (SCT) test;
- (2) The comparative cervical tuberculin (CCT) test; and
- (3) The blood tuberculosis (BTB) test.

Permit. An official document issued by a representative of APHIS, a State representative, or an accredited veterinarian that must accompany any reactor, suspect, or exposed captive cervid moved interstate.

Qualified herd. A herd of captive cervids that has tested negative to at least one official tuberculosis test of all

eligible captive cervids (§ 77.10(f)) within the past 12 months, and that is not classified as an accredited herd.

Quarantine. Prohibition from interstate movement, except for slaughter or necropsy.

Reactor. Any captive cervid that shows a response to the SCT test or the CCT test, or is classified by the testing laboratory as "*M. bovis* positive" on the BTB test, and is classified a reactor by the testing veterinarian; or any suspect captive cervid that is classified a reactor upon slaughter inspection or necropsy after histopathology and/or culture of selected tissues by the USDA or State veterinarian performing or supervising the slaughter inspection or necropsy.

Regular-kill slaughter animal. An animal that is slaughtered for food or any reason other than because of a disease regulated under 9 CFR chapter I (such as tuberculosis, brucellosis, or any other livestock disease for which movement of animals is restricted under 9 CFR chapter I).

Single cervical tuberculin (SCT) test. The intradermal injection of 0.1 mL (5,000 tuberculin units) of USDA PPD bovis tuberculin in the mid-cervical area with reading by visual observation and palpation at 72 hours (plus or minus 6 hours) following injection.

Suspect. Any captive cervid that is not negative to the SCT test or the CCT test, or that is classified by the testing laboratory as equivocal on the BTB test, and that is not classified as a reactor by the testing veterinarian.

Tuberculin. A product that is approved by and produced under USDA license for injection into cervids and other animals for the purpose of detecting bovine tuberculosis.

Tuberculosis. The contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. (Also referred to as bovine tuberculosis.)

Tuberculous. Having lesions indicative of tuberculosis, infected with tuberculosis based on isolation of *M. bovis*, or being from a herd in which *M. bovis* has been isolated.

USDA. The United States Department of Agriculture.

Whole herd test. An official tuberculosis test of all test eligible animals in the herd.

§ 77.9 General restrictions.

(a) Except for movement from accredited herds in accordance with § 77.12, no captive cervid may be moved interstate unless it has been tested using an official tuberculosis test, and it is moved in compliance with this subpart.

(b) No captive cervid with a response to any official tuberculosis test is eligible for interstate movement unless

the captive cervid subsequently tests negative to a supplemental official tuberculosis test or is moved interstate directly to slaughter or necropsy in accordance with § 77.17.

(c) Except for captive cervids moving interstate under permit directly to slaughter or necropsy (§ 77.17), each captive cervid or shipment of captive cervids to be moved interstate must be accompanied by a certificate issued within 30 days of the movement by a State or Federal animal health official or an accredited veterinarian. The certificate must state the number of the official eartag or other identification approved by the Administrator for each captive cervid to be moved, the number of captive cervids covered by the certificate, the purpose of the movement, the origin and destination of the captive cervids, the consignor, and the consignee.

(d) Captive cervids in zoological parks that have been accredited by the American Zoo and Aquarium Association (AZA) are exempt from the regulations in this subpart when the captive cervids are moved directly interstate between AZA member facilities. Any captive cervids moved interstate that are not moved directly from an AZA member facility to another AZA member facility must be moved in accordance with the regulations in this subpart.

§ 77.10 Testing procedures for tuberculosis in captive cervids.

(a) *Approved testers.* Except as explained in paragraphs (a)(1) and (a)(2) of this section, official tuberculosis tests may only be given by a veterinarian employed by the State in which the test is administered or by a veterinarian employed by USDA.

(1) A designated accredited veterinarian may conduct the SCT test, except as provided in § 77.11(a)(2) and § 77.16(e) and (f).

(2) Any accredited veterinarian may conduct the BTB test.

(b) *Approved diagnostic laboratories.*

(1) With one exception, histopathology and culture results for all tuberculosis diagnoses will be accepted only from the National Veterinary Services Laboratories (NVSL) in Ames, Iowa. The exception is that results will be accepted from a laboratory of the Food Safety and Inspection Service, USDA, for tissue examination of regular-kill slaughter animals in those cases where no submission is made to NVSL.

(2) The following laboratories are approved to perform the BTB test: Texas Veterinary Medical Center laboratory at

Texas A&M University in College Station, Texas.

(c) *Identification.* Any captive cervid tested with an official tuberculosis test must bear official identification in the form of an official eartag, or another identification device or method approved by the Administrator as unique and traceable, at the time of the official tuberculosis test. Use of any identification device or method other than an official eartag must first be approved by the Administrator as unique and traceable. Written requests for approval must be sent to National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231.

(d) *Reporting of tests.*

(1) *SCT and CCT tests.* For the SCT and CCT tests, the testing veterinarian must submit a report to cooperating State and Federal animal health officials of the State in which the captive cervid is tested. The report must include the following information for all SCT and CCT tests administered: The number of the individual eartag or other identification approved by the Administrator; the age, sex, and breed of each captive cervid tested; a record of all responses; the size of each response for the CCT test; and the test interpretation.

(2) *BTB test.* Copies of the BTB test results must be submitted by the testing laboratory to the person, firm, or corporation responsible for the management of the herd, cooperating State and Federal animal health officials of the State in which the captive cervid is tested, and the testing veterinarian. The report must include the following information for all BTB tests administered: The number of the individual eartag or other identification approved by the Administrator; the age, sex, and breed of each captive cervid tested; the test interpretation, and a summary of supporting data. Full supporting data must be submitted by the testing laboratory on a case-by-case basis at the request of cooperating State and Federal animal health officials.

(e) *Test interpretation.*

(1) Interpretation of an SCT test will be based upon the judgment of the testing veterinarian after observation and palpation of the injection site, in accordance with the classification requirements described in § 77.11(a).

(2) Interpretation of a CCT test will be in accordance with the classification requirements described in § 77.11(b).

(3) Interpretation of a BTB test will be in accordance with the patented

standards for the BTB test³ and the classification requirements described in § 77.11(c).

(f) *Captive cervids eligible for testing.* Except as provided in § 77.12(a)(1) and § 77.13(a)(1), testing of herds for classification must include all captive cervids 1 year of age or over and any captive cervids other than natural additions (captive cervids born into the herd) under 1 year of age.

§ 77.11 Official tuberculosis tests.

(a) *Single cervical tuberculin (SCT) test.*

(1) The SCT test is the primary test to be used in individual captive cervids and in herds of unknown tuberculous status. Each captive cervid that responds to the SCT test must be classified as a suspect until it is retested with either the CCT test or the BTB test and is either found negative for tuberculosis or is classified as a reactor, unless, with the exception of a designated accredited veterinarian, the testing veterinarian determines that the captive cervid should be classified as a reactor based on its response to the SCT test. A designated accredited veterinarian must classify a responding captive cervid as a suspect, unless the DTE determines, based on epidemiological evidence, that the captive cervid should be classified as a reactor.

(2) The SCT test is the primary test to be used in affected herds and in herds that have received captive cervids from an affected herd. When used with affected herds or in herds that have received captive cervids from an affected herd, the SCT test may only be administered by a veterinarian employed by the State in which the test is administered or employed by USDA. In affected herds or herds that have received captive cervids from an affected herd, each captive cervid that responds to the SCT test must be classified as a reactor, unless the DTE determines that the captive cervid should be classified as a suspect because of possible exposure to a tuberculous animal.

(b) *Comparative cervical tuberculin (CCT) test.*

(1) The CCT test is a supplemental test that may only be used for retesting captive cervids classified as suspects. The CCT test may be used in affected herds only after the herd has tested

³ The patented standards for the BTB test may be obtained from the Texas Veterinary Medical Center, College of Veterinary Medicine, Texas A&M University, College Station, Texas, or from the Deer Research Laboratory, Department of Microbiology, University of Otago, P.O. Box 56, Dunedin, New Zealand.

negative to at least two whole herd SCT tests, and only with the prior written consent of the DTE. The CCT test may not be used as a primary test for herds of unknown tuberculous status.

(2) A captive cervid tested with the CCT test must be classified as negative if it has a response to the bovine PPD tuberculin that is less than 1 mm.

(3) Unless the testing veterinarian determines that the captive cervid should be classified as a reactor because of possible exposure to a tuberculous animal, a captive cervid tested with the CCT test must be classified as a suspect if:

(i) It has a response to the bovine PPD tuberculin that is greater than 2 mm and that is equal to the response to the avian PPD tuberculin; or

(ii) It has a response to the bovine PPD tuberculin that is equal to or greater than 1mm and equal to or less than 2mm, and that is equal to or greater than the response to the avian PPD tuberculin.

(4) A captive cervid tested with the CCT test must be classified as a reactor if:

(i) It has a response to the bovine PPD tuberculin that is greater than 2 mm and that is at least 0.5 mm greater than the response to the avian PPD tuberculin; or

(ii) It has been classified as a suspect on two successive CCT tests.

(iii) Any exceptions to reactor classification under the conditions in paragraph (b)(4)(i) and (b)(4)(ii) of this section must be justified by the testing veterinarian in writing and have the concurrence of the DTE.

(c) Blood tuberculosis (BTB) test.

(1) The BTB test is a supplemental test that may be used in place of the CCT test for retesting captive cervids classified as suspects.

(2) Except as provided in § 77.16(e), any captive cervid classified by the testing laboratory as "equivocal" will be classified as a suspect.

(3) Any captive cervid classified by the testing laboratory as "M. bovis positive" will be classified as a reactor.

(4) Any captive cervid classified by the testing laboratory as "avian" or "negative" will be considered negative for tuberculosis.

(5) The owner of the captive cervid tested is responsible for the cost of the BTB test.

§ 77.12 Interstate movement from accredited herds.

(a) *Qualifications.* To be recognized as an accredited herd:

(1) All captive cervids in the herd eligible for testing in accordance with § 77.10(f) must have tested negative to at least three consecutive official

tuberculosis tests, conducted at 9–15 month intervals. However, captive cervids under 1 year of age that are not natural additions to the herd do not have to be tested if they were born in and originate from an accredited herd.

(2) The owner of the herd must have a document issued by cooperating State or Federal animal health officials stating that the herd has met the requirements in paragraph (a)(1) of this section and is classified as an accredited herd.

(b) *Movement allowed.* A captive cervid from an accredited herd may be moved interstate without further tuberculosis testing if it is accompanied by a certificate, as provided in § 77.9(c), that includes a statement that the captive cervid is from an accredited herd. If a group of captive cervids from an accredited herd is being moved interstate together to the same destination, all captive cervids in the group may be moved under one certificate.

(c) *Herd additions allowed.* No captive cervid may be added to an accredited herd except in accordance with paragraphs (c)(4) and (c)(5), and either paragraph (c)(1), (c)(2), or (c)(3) of this section, as follows:

(1) The captive cervid to be added must be moved directly from an accredited herd;

(2) The captive cervid to be added must be moved directly from a qualified or monitored herd and must have tested negative to an official tuberculosis test conducted within 90 days prior to movement to the premises of the accredited herd. Any captive cervid moved from a qualified or monitored herd must also be isolated from all members of the accredited herd until it tests negative to an official tuberculosis test conducted at least 90 days following the date of arrival at the premises of the accredited herd. If a group of captive cervids is being moved together, the entire group must be isolated from all other livestock, but captive cervids in the group need not be isolated from each other, during the testing period. Such herd additions will not receive status as members of the accredited herd for purposes of interstate movement until they have tested negative to an official tuberculosis test and been released from isolation; or

(3) If the captive cervid to be added is not being moved directly from a classified herd, the captive cervid must be isolated from all other members of the herd of origin and must test negative to two official tuberculosis tests. The isolation must begin at the time of the first official tuberculosis test. The tests must be conducted at least 90 days apart, and the second test must be

conducted within 90 days prior to movement to the premises of the accredited herd. The captive cervid must also be isolated from all members of the accredited herd until it tests negative to an official tuberculosis test conducted at least 90 days following the date of arrival at the premises of the accredited herd. If a group of captive cervids is being moved together, the entire group must be isolated from all other animals, but captive cervids in the group need not be isolated from each other, during the testing period. Such herd additions will not receive status as members of the accredited herd for purposes of interstate movement until they have tested negative to an official tuberculosis test and have been released from isolation.

(4) A captive cervid to be added must not have been exposed during the 90 days prior to its movement to either:

(i) A captive cervid from a herd with a lower classification status than its own; or

(ii) Any tuberculous livestock.

(d) *Maintenance of accredited herd status.* To maintain status as an accredited herd, the herd must test negative to an official tuberculosis test within 21–27 months from the anniversary date of the third consecutive test with no evidence of tuberculosis disclosed (that is, the test on which the herd was recognized as accredited, or the accrediting test). Each time the herd is tested for reaccreditation, it must be tested 21–27 months from the anniversary date of the accrediting test, not from the last date of reaccreditation (for example, if a herd is accredited on January 1 of a given year, the anniversary date will be January 1 of every second year). Accredited herd status is valid for 24 months (730 days) from the anniversary date of the accrediting test. If the herd is tested between 24 and 27 months after the anniversary date, its accredited herd status will be suspended for the interim between the anniversary date and the reaccreditation test. During the suspension period, the herd will be considered "unclassified" and captive cervids may be moved interstate from the herd only in accordance with § 77.15.

§ 77.13 Interstate movement from qualified herds.

(a) *Qualifications.* To be recognized as a qualified herd:

(1) All captive cervids in the herd eligible for testing in accordance with § 77.10(f) must have tested negative to one official tuberculosis test that was administered to the herd within a 7-month period. However, captive cervids

under 1 year of age that are not natural additions do not have to be tested if they were born in and originate from an accredited, qualified, or monitored herd.

(2) The owner of the herd must have a document issued by cooperating State and Federal animal health officials stating that the herd has met the requirement in paragraph (a)(1) of this section and is classified as a qualified herd.

(b) *Movement allowed.* A captive cervid from a qualified herd may be moved interstate only if:

(1) The captive cervid is not known to be infected with or exposed to tuberculosis; and

(2) The captive cervid is accompanied by a certificate, as provided in § 77.9(c), that includes a statement that the captive cervid is from a qualified herd. Except as provided in paragraph (b)(3) of this section, the certificate must also state that the captive cervid has tested negative to an official tuberculosis test conducted within 90 days prior to the date of movement. If a group of captive cervids from a qualified herd is being moved interstate together to the same destination, all captive cervids in the group may be moved under one certificate.

(3) Captive cervids under 1 year of age that are natural additions to the qualified herd or that were born in and originate from a classified herd may move without testing, provided that the certificate accompanying them states that the captive cervids are natural additions to the qualified herd or were born in and originated from a classified herd and have not been exposed to captive cervids from an unclassified herd.

(c) *Herd additions allowed.* No captive cervid may be added to a qualified herd except in accordance with paragraph (c)(4) and either paragraph (c)(1), (c)(2), or (c)(3) of this section, as follows:

(1) The captive cervid to be added must be moved directly from an accredited herd;

(2) The captive cervid to be added must be moved directly from a qualified or monitored herd and must have tested negative to an official tuberculosis test conducted within 90 days prior to movement to the premises of the accredited herd;

(3) If the captive cervid to be added is not being moved directly from a classified herd, the captive cervid must be isolated from all other animals in its herd of origin and must test negative to two official tuberculosis tests prior to movement. The isolation must begin at the time of the first official tuberculosis test. The tests must be conducted at

least 90 days apart, and the second test must be conducted within 90 days prior to movement to the premises of the qualified herd. The captive cervid must then be kept in insulation from all animals until it tests negative to an official tuberculosis test conducted at least 90 days following the date of arrival at the premises of the qualified herd. If a group of captive cervids is being moved together, the entire group must be isolated from all other livestock, but captive cervids in the group need not be isolated from each other, during the testing period. Such herd additions will not receive status as members of the qualified herd for purposes of interstate movement until they have tested negative to an official tuberculosis test and been released from isolation.

(4) A captive cervid to be added must not have been exposed during the 90 days prior to its movement to either:

(i) A captive cervid from a herd with a lower classification status than its own; or

(ii) Any tuberculous livestock.

(d) *Maintenance of qualified herd status.* To maintain status as a qualified herd, the herd must test negative to an official tuberculosis test within 9–15 months from the anniversary date of the first test with no evidence of tuberculosis disclosed (this is the qualifying test). Each time the herd is retested for qualified status, it must be tested 9–15 months from the anniversary date of the qualifying test, not from the last date of requalification (for example, if a herd is qualified on January 1 of a given year, the anniversary date will be January 1 of each consecutive year). Qualified herd status remains in effect for 12 months (365 days) following the anniversary date of the qualifying test. Qualified herd status will be suspended between the anniversary date and the requalifying test, if the herd is not tested within 12 months. During the suspension period, the herd will be considered “unclassified” and captive cervids may be moved interstate from the herd only in accordance with § 77.15.

§ 77.14 Interstate movement from monitored herds.

(a) *Qualifications.* To be recognized as a monitored herd:

(1) Identification records must be maintained by the person, firm, or corporation responsible for the management of the herd for as long as status as a monitored herd is desired. Such records must be maintained on all captive cervids in the herd that are slaughtered, inspected, and found

negative for tuberculosis at an approved slaughtering establishment or necropsied at an approved diagnostic laboratory. Identification records may also include captive cervids from the herd that tested negative for tuberculosis in accordance with requirements for interstate movement. No less than one half of the captive cervids on which records are kept must be slaughter inspected; and

(2) A sufficient number of captive cervids in the herd must be slaughter inspected or tested for interstate movement to ensure that tuberculosis infection at a prevalence level of 2 percent or more will be detected with a confidence level of 95 percent.⁴ A maximum number of 178 captive cervids must be slaughter inspected or tested for interstate movement over a 3-year period to meet this requirement.

(b) *Movement allowed.* A captive cervid from a monitored herd may be moved interstate only if:

(1) The captive cervid is not known to be infected with or exposed to tuberculosis; and

(2) The captive cervid is accompanied by a certificate, as provided in § 77.9(c), that includes a statement that the captive cervid is from a monitored herd. Except as provided in paragraph (b)(3) of this section, the certificate must also state that the captive cervid has tested negative to an official tuberculosis test conducted within 90 days prior to the date of movement. If a group of captive cervids from a monitored herd is being moved interstate together to the same destination, all captive cervids in the group may be moved under one certificate.

(3) Captive cervids under 1 year of age that are natural additions to the monitored herd or that were born in and originate from a classified herd may move without testing, provided that the certificate accompanying them states that the captive cervids are natural additions to the monitored herd or were born in and originated from a classified herd and have not been exposed to captive cervids from an unclassified herd.

(c) *Herd additions allowed.* No captive cervid may be added to a monitored herd except in accordance with paragraph (c)(4) and either paragraph (c)(1), (c)(2), or (c)(3) of this section, as follows:

⁴ A chart showing the number of captive cervids that must be slaughter inspected or tested for interstate movement, depending on the size of a herd, to meet this requirement may be obtained from the National Animal Health Programs staff, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231.

(1) The captive cervid to be added must be moved directly from an accredited herd;

(2) The captive cervid to be added must be moved directly from a qualified or monitored herd and must have tested negative to an official tuberculosis test conducted within 90 days prior to movement to the premises of the monitored herd; or

(3) If the captive cervid to be added is not being moved directly from a classified herd, the captive cervid must be isolated from all other animals and must test negative to two official tuberculosis tests. The isolation must begin at the time of the first official tuberculosis test. The tests must be conducted at least 90 days apart, and the second test must be conducted within 90 days prior to movement to the premises of the monitored herd. The captive cervid must then be kept in isolation from all animals until it tests negative to an official tuberculosis test conducted at least 90 days following the date it arrives at the premises of the monitored herd. If a group of captive cervids is being moved together, the entire group must be isolated from all other animals, but captive cervids in the group need not be isolated from each other, during the testing period. Such herd additions will not receive status as members of the monitored herd for purposes of interstate movement until they have tested negative to an official tuberculosis test and been released from isolation.

(4) A captive cervid to be added must not have been exposed during the 90 days prior to its movement to either:

(i) A captive cervid from a herd with a lower classification status than its own; or

(ii) Any tuberculous livestock.

(d) *Maintenance of monitored herd status.* The person, firm, or corporation responsible for the management of the herd must submit an annual report to cooperating State or Federal animal health officials prior to the anniversary date of classification to give the number of captive cervids currently in the herd and the number of captive cervids from the herd 1 year of age and older identified, slaughtered, and inspected at an approved slaughtering establishment or necropsied at an approved diagnostic laboratory during the preceding year and captive cervids that have tested negative for tuberculosis in accordance with interstate movement requirements. The number of slaughter inspections or negative testing captive cervids reported in any given year must be at least 25 percent of the total number required over a 3-year period to qualify a herd for monitored herd status. During each

consecutive 3-year period, 100 percent of the qualifying total must be reported.

§ 77.15 Interstate movement from unclassified herds.

(a) Except as provided in paragraph (b) of this section, a captive cervid that is not known to be infected with or exposed to tuberculosis and that is from a herd not classified as accredited, qualified, or monitored, may be moved interstate if the captive cervid is accompanied by a certificate that states that:

(1) The captive cervid has tested negative to two official tuberculosis tests conducted no less than 90 days apart;

(2) The second tuberculosis test was conducted within 90 days prior to the date of movement; and

(3) The captive cervid was isolated from all other animals during the testing period (the period beginning at the time of the first test and ending at the time of interstate movement). If a group of captive cervids is being moved together, the entire group must be isolated from all other animals, but captive cervids in the group need not be isolated from each other, during the testing period.

(b) The Administrator may, with the concurrence of the cooperating State animal health officials of the State of destination, and upon request in specific cases, permit the movement of captive cervids not otherwise provided for in this subpart which have not been classified as reactors and are not otherwise known to be affected with tuberculosis, under such conditions as the Administrator may prescribe in each specific case to prevent the spread of tuberculosis. The Administrator shall promptly notify the appropriate cooperating State animal health officials of the State of destination of any such action.

§ 77.16 Other interstate movements.

(a) *Herds containing a suspect.*

(1) *The suspect.*

(i) A captive cervid classified as a suspect on the SCT test must be quarantined until it is slaughtered or retested by the CCT test or the BTB test and found negative for tuberculosis. Retesting must be as follows:

(A) The first CCT test must be administered within the first 10 days following the SCT test or, if not, must be administered at least 90 days after the SCT test. If the CCT test is administered within 10 days of the SCT test, the injection must be on the side of the neck opposite the injection for the SCT test.

(B) The sample for the first BTB test may not be taken until at least 12 days

after the injection for the SCT test. It is recommended that the sample be taken within 30 days following the injection for the SCT test.

(ii) A captive cervid classified as a suspect on the first CCT test or the first BTB test must be quarantined until the following has occurred:

(A) A suspect on the first CCT test is tested with a second CCT test at least 90 days after the first CCT test and is found negative for tuberculosis; or

(B) A suspect on the first BTB test is tested with a second BTB test and is found negative for tuberculosis. It is recommended that the captive cervid be tested with the second BTB test within 60 days following the injection for the SCT test.

(2) *The remainder of the herd.* Any herd containing a suspect to an official tuberculosis test must be quarantined until the suspect is retested by the CCT test or the BTB test and found negative for tuberculosis, or the suspect is inspected at slaughter or necropsied and found negative for tuberculosis after histopathology and culture of selected tissues. If the suspect is found negative for tuberculosis upon testing, or after slaughter inspection or necropsy and histopathology and culture of selected tissues, the herd may be released from quarantine and will return to the herd classification status in effect before the herd was quarantined. If the suspect is classified as a reactor upon testing, or after slaughter inspection or necropsy and histopathology and/or culture of selected tissues, the herd may be released from quarantine only in accordance with § 77.16(b) for herds containing a reactor.

(b) *Herds containing a reactor.* The following requirements apply to herds containing a reactor, except for herds that have received captive cervids from an affected herd. Herds that have received captive cervids from an affected herd must be quarantined and tested in accordance with § 77.16(e).

(1) *The reactor.* Captive cervids classified as reactors must be quarantined.

(2) *The remainder of the herd.* Any herd containing reactors must be quarantined until the reactors are slaughtered or necropsied in accordance with § 77.17 and:

(i) If upon slaughter inspection or necropsy any reactors exhibit lesions compatible with or suggestive of tuberculosis, found by histopathology, without the isolation of *M. bovis*, the remainder of the herd may be released from quarantine in accordance with the provisions of § 77.16(c).

(ii) If *M. bovis* is isolated from any reactors, the remainder of the herd will

be considered an affected herd, and will be subject to the provisions for affected herds in § 77.16(d).

(iii) If upon slaughter inspection or necropsy all reactors exhibit no gross lesions (NGL) of tuberculosis and no evidence of tuberculosis infection is found by histopathology and culture of *M. bovis* on specimens taken from the NGL animals, the remainder of the herd may be released from quarantine, and captive cervids from the herd may be moved interstate in accordance with the herd classification status in effect before the herd was quarantined if one of the following conditions is met:

(A) The remainder of the herd is given a whole herd test and is found negative for tuberculosis.

(B) The remainder of the herd is given a whole herd test, and all reactors to the whole herd test exhibit no gross lesions (NGL) of tuberculosis upon slaughter inspection or necropsy and no evidence of tuberculosis infection is found by histopathology or culture of *M. bovis* on specimens taken from the NGL animals.

(iv) If no evidence of tuberculosis is found in any reactor upon slaughter inspection or necropsy, but it is not possible to conduct a whole herd test on the remainder of the herd, the herd will be evaluated, based on criteria such as the testing history of the herd and the State history of tuberculosis infection, by the DTE to determine whether or not the herd may be released from quarantine.

(c) *Herds found to have only lesions of tuberculosis.* A herd in which captive cervids with lesions compatible with or suggestive of tuberculosis are found by histopathology without the isolation of *M. bovis* may be released from quarantine and return to the herd classification status in effect before the herd was quarantined, with the concurrence of the DTE, if the herd tests negative to tuberculosis on a whole herd test conducted 90 days following the removal of the lesioned captive cervid, provided the herd has not been exposed to *M. bovis* during the 90 days. To maintain its herd classification status, the herd must test negative to two annual whole herd tests beginning 10–12 months after the herd is released from quarantine. If any captive cervids in the herd respond to one of the tests, the herd will be subject to the provisions of § 77.16(a) or (b). If the herd is not given the two annual whole herd tests, it will become an unclassified herd.

(d) *Affected herds.* A herd determined to be an affected herd must be quarantined until the herd has tested negative to three whole herd tests in succession, with the first test given 90

days or more after the last test yielding a reactor and the last two tests given at intervals of not less than 180 days. If the herd tests negative to the three whole herd tests, it will be released from quarantine, but will be considered an unclassified herd, and captive cervids may only be moved interstate from the herd in accordance with § 77.15. In addition, the herd must be given five consecutive annual whole herd tests after release from quarantine. (These five tests will count towards qualifying the herd for herd classification.) As an alternative to testing, the herd may be depopulated.

(e) *Herds that have received captive cervids from an affected herd.* If a herd has received captive cervids from an affected herd, the captive cervids from the affected herd of origin will be considered exposed to tuberculosis. The exposed captive cervids and the receiving herd must be quarantined. The exposed captive cervids must be slaughtered, necropsied, or tested with the SCT test by a veterinarian employed by the State in which the test is administered or employed by USDA. The BTB test may be used simultaneously with the SCT test as an additional diagnostic test. Any exposed captive cervid that responds to the SCT test or tests “*M. bovis* positive” or “equivocal” on the BTB test must be classified as a reactor and must be slaughtered inspected or necropsied. Any exposed captive cervid that tests negative to the SCT test or tests “avian” or “negative” on the BTB test will be considered as part of the affected herd of origin for purposes of testing, quarantine, and the five annual whole herd tests required for affected herds in § 77.16(d).

(1) If bovine tuberculosis is confirmed in any of the exposed captive cervids by bacterial isolation of *M. bovis*, the receiving herd will be classified as an affected herd and will be subject to the provisions for affected herds in § 77.16(d).

(2) If any of the exposed captive cervids are found to exhibit lesions compatible with or suggestive of tuberculosis, found by histopathology, without the isolation of *M. bovis*, the receiving herd will be subject to appropriate testing as determined by the DTE.

(3) If all the exposed captive cervids test negative for tuberculosis, the receiving herd will be released from quarantine if it is given a whole herd test and is found negative for tuberculosis, and will return to the herd classification in effect before the herd was quarantined. In addition, the receiving herd must be retested with the

SCT test 1 year after release from quarantine in order for captive cervids from the herd to continue to be moved interstate. Supplemental diagnostic tests may be used if any captive cervids in the herd show a response to the SCT test.

(f) *Source herds.* A herd suspected of being the source of tuberculous captive cervids based on a slaughter traceback investigation must be quarantined upon notification (by the person conducting the investigation) to the USDA Area Veterinarian-in-Charge for the State in which the herd resides, and a herd test must be scheduled. If the herd is suspected of being the source of slaughter captive cervids having lesions of tuberculosis, the herd test must be done by a veterinarian employed by the State in which the test is administered or employed by USDA.

(1) If the herd is identified as the source of captive cervids having lesions of tuberculosis and *M. bovis* has been confirmed by bacterial isolation from the slaughter animal, all captive cervids in the herd that respond to the SCT test must be classified as reactors. If none respond to the SCT test, the herd may be released from quarantine and will return to the herd classification status in effect before the herd was quarantined, unless the DTE judges that additional testing is appropriate to ensure the herd's freedom from tuberculosis.

(2) If the herd is identified as the source of captive cervids that exhibit lesions compatible with or suggestive of tuberculosis, found by histopathology, without the isolation of *M. bovis*, all captive cervids in the herd that respond to the SCT test must be classified as suspects, and supplemental tests must be applied.

(3) If the herd is not identified as the source herd, the herd will be released from quarantine if the herd is given a whole herd test and is found negative for tuberculosis. The herd will then return to the herd classification status in effect before the herd was quarantined.

(g) *Newly assembled herds.* (1) A newly assembled herd will be classified as having the herd status of the herd from which the captive cervids originated. If the herd is assembled from captive cervids from more than one herd, it will be classified as having the herd status of the originating herd with the lowest status. A newly assembled herd will also assume the testing schedule of the herd status it is given. Captive cervids in the herd must have no exposure to captive cervids from a herd of lesser status than the herd of origin determining the status of the newly assembled herd or to any tuberculous livestock.

(2) A herd newly assembled on premises where a tuberculous herd has been depopulated must be given two consecutive annual whole herd tests. The first test must be administered at least 6 months after the assembly of the new herd. If the whole herd tests are not conducted within the indicated time frame, the herd will be quarantined. If the herd tests negative to the two whole herd tests, there are no further requirements. If any captive cervid in the herd responds on one of the whole herd tests, the herd will be subject to the provisions of § 77.16(a) or (b). If the premises has been vacant for more than 1 year preceding the assembly of the new herd on the premises, these requirements may be waived if the risk of tuberculosis transmission to the newly assembled herd is deemed negligible by cooperating State and Federal animal health officials.

§ 77.17 Procedures for and interstate movement to necropsy and slaughter.

(a) *Procedures for necropsy and slaughter.*

(1) A necropsy must be performed by or under the supervision of a veterinarian who is employed by USDA or employed by the State in which the captive cervid was classified, and who is trained in tuberculosis necropsy procedures.

(2) If, upon necropsy, a captive cervid is found without evidence of *M. bovis* infection by histopathology and culture, the captive cervid will be considered negative for tuberculosis.

(3) Reactors, suspects, and exposed captive cervids may be slaughtered only at an approved slaughtering establishment, as defined in § 77.8.

(b) *Interstate movement to necropsy or slaughter.*

(1) *Permit.* Any reactor, suspect, or exposed captive cervid to be moved interstate to necropsy or slaughter must be accompanied by a permit issued by a representative of APHIS, a State representative, or an accredited veterinarian. The captive cervid must remain on the premises where it was identified as a reactor, suspect, or exposed captive cervid until a permit for its movement is obtained. No stopover or diversion from the destination listed on the permit is allowed. If a change in destination becomes necessary, a new permit must be obtained from a cooperating State or Federal animal health official or an accredited veterinarian before the interstate movement begins. The permit must list:

(i) The classification of the captive cervid (reactor, suspect, or exposed);

(ii) The reactor eartag number, or, for suspects and exposed captive cervids, the official eartag or other approved identification number;

(iii) The owner's name and address;

(iv) The origin and destination of the captive cervids;

(v) The number of captive cervids covered by the permit; and

(vi) The purpose of the movement.

(2) *Identification of reactors.* Reactors must be tagged with an official eartag attached to the left ear and bearing a serial number and the inscription "U.S. Reactor," and either:

(i) Branded with the letter "T" high on the left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size; or

(ii) Permanently identified by the letters "TB" tattooed legibly in the left ear, sprayed on the left ear with yellow paint, and either accompanied directly to necropsy or slaughter by an APHIS or State representative or moved directly to necropsy or slaughter in a vehicle closed with official seals. Such 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.

(3) *Identification of exposed captive cervids.* Exposed captive cervids must be identified by an official eartag or other approved identification and either:

(i) Branded with the letter "S" high on the left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size; or

(ii) Either accompanied directly to necropsy or slaughter by an APHIS or State representative, or moved directly to necropsy or slaughter in a vehicle closed with official seals. Such 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.

§ 77.18 Cleaning and disinfection of premises, conveyances, and materials.

All conveyances and associated equipment, premises, and structures that are used for receiving, holding, shipping, loading, unloading, and delivering captive cervids in connection with their interstate movement and that are determined by cooperating State and Federal animal health officials to be contaminated because of occupation or use by tuberculous or reactor livestock must be cleaned and disinfected under the supervision of the cooperating State or Federal animal health officials. Such cleaning and disinfecting must be done in accordance with the procedures

approved by the cooperating State or Federal animal health officials. Cleaning and disinfection must be completed before the premises, conveyances, or materials may again be used to convey, hold, or in any way come in contact with any livestock.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

9. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.22, 2.80, and 371.2(d).

§ 91.1 [Amended]

10. In § 91.1, the definition of *Animals* is amended by adding "captive cervids," immediately after "cattle (including American bison)."

11. Section 91.7 is added to read as follows:

§ 91.7 Captive cervids.

To be eligible for export, a captive cervid must be accompanied by an origin health certificate stating that the captive cervid has tested negative to an official single cervical tuberculin test for tuberculosis, as described in part 77, subpart B, of this chapter, within 90 days prior to export. The origin health certificate must specify the date the test was conducted and the test results.

Done in Washington, DC, this 23rd day of December 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-34726 Filed 12-30-98; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF ENERGY

10 CFR Part 835

[Docket No: EH-RM-96-835]

RIN 1901-AA59

Occupational Radiation Protection; Correction

AGENCY: Department of Energy.

ACTION: Final rule; correction.

SUMMARY: The Department of Energy published a final rule amending its regulations on Occupational Radiation Protection on November 4, 1998. This document corrects errors in the amendatory language of that rule.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Joel Rabovsky on (301) 903-2135.