

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. APHIS–2008–0068]

#### Tuberculosis; Amend the Status of New Mexico From Accredited Free to Modified Accredited Advanced

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

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

**SUMMARY:** We are amending the regulations to remove a zone in New Mexico from the list of accredited-free zones for bovine tuberculosis and reclassify the entire State as modified accredited advanced. Because two affected herds have been detected in New Mexico's accredited-free zone since May 2007, the zone no longer meets our requirements for accredited-free status. This action is necessary to reduce the likelihood of the spread of bovine tuberculosis within the United States.

**DATES:** This interim rule is effective September 11, 2008. We will consider all comments that we receive on or before November 10, 2008.

**Compliance Date:** The date for complying with certain requirements of 9 CFR 77.10 for sexually intact heifers, steers, and spayed heifers moving interstate from New Mexico is delayed until further notice (see "Delay in Compliance" under **SUPPLEMENTARY INFORMATION**). The compliance date for all other provisions in 9 CFR part 77 applicable to the interstate movement of cattle and bison from the State of New Mexico is September 11, 2008.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/fdmspublic/>

*component/main?main=DocketDetail&d=APHIS-2008-0068* to submit or view comments and to view supporting and related materials available electronically.

- **Postal Mail/Commercial Delivery:** Please send two copies of your comment to Docket No. APHIS–2008–0068, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0068.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

**FOR FURTHER INFORMATION CONTACT:** Dr. C. William Hench, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Veterinary Services, APHIS, 2150 Centre Ave., Bldg. B, MSC 3E20, Ft. Collins, CO 80526; (970) 494–7378.

#### SUPPLEMENTARY INFORMATION:

##### Background

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by the bacterium *Mycobacterium bovis*. Although commonly defined as a chronic debilitating disease, bovine tuberculosis can occasionally assume an acute, rapidly progressive course. While any body tissue can be affected, lesions are most frequently observed in the lymph nodes, lungs, intestines, liver, spleen, pleura, and peritoneum. Although cattle are considered to be the true hosts of *M. bovis*, the disease has been reported in several other species of both domestic and nondomestic animals, as well as in humans.

At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment in the United States of the National Cooperative State/Federal

Bovine Tuberculosis Eradication Program for tuberculosis in livestock.

In carrying out the national eradication program, the Animal and Plant Health Inspection Service issues and enforces regulations. The regulations require the testing of cattle and bison for tuberculosis, define the Federal tuberculosis status levels for States or zones (accredited-free, modified accredited advanced, modified accredited, accreditation preparatory, and nonaccredited), provide the criteria for attaining and maintaining those status levels, and contain testing and movement requirements for cattle and bison leaving States or zones of a particular status level. These regulations are contained in 9 CFR part 77 and in the Bovine Tuberculosis Eradication Uniform Methods and Rules, 1999, which is incorporated by reference into the regulations.

Section 77.7 of the regulations lists accredited-free States and zones and also contains requirements for retention of accredited-free status. Under § 77.7(c), if two or more affected herds are detected in an accredited-free State or zone within a 48-month period, that State or zone will be removed from the list of accredited-free States or zones and will be reclassified as modified accredited advanced.

The State of New Mexico has been divided into two zones for the purpose of tuberculosis status classification, with one listed in § 77.7(b)(2) as accredited-free and a second listed in § 77.9(b)(2) as modified accredited advanced. New Mexico has had an ongoing investigation to detect bovine tuberculosis in domestic cattle herds since April 2007, when an epidemiological investigation of a tuberculosis-positive cow found through slaughter surveillance confirmed an affected dairy herd in the accredited-free zone. Recently, a second affected herd was identified in the same zone. The finding of the second affected herd within a 48 month period means that the zone no longer meets the requirements for accredited-free status. Therefore, we are reclassifying the entire State of New Mexico as modified accredited advanced. This action is necessary to reduce the likelihood of the spread of tuberculosis within the United States.

As a result of this action, cattle or bison being moved interstate from

anywhere in New Mexico will now have to meet the testing requirements that apply to animals from modified accredited advanced States or zones. Under the regulations in § 77.10, cattle or bison that originate in a modified accredited advanced State or zone, and are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

- The cattle or bison are moved directly to slaughter at an approved slaughtering establishment (§ 77.10(a));
- The cattle or bison are sexually intact heifers moved to an approved feedlot, or are steers or spayed heifers; and are either officially identified or identified by premises of origin identification (§ 77.10(b));
- The cattle or bison are from an accredited herd and are accompanied by a certificate stating that the accredited herd completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement (§ 77.10(c)); or
- The cattle or bison are sexually intact animals, are not from an accredited herd, are officially identified, and are accompanied by a certificate stating that they were negative to an official tuberculin test conducted within 60 days prior to the date of movement (§ 77.10(d)).

#### **Delay in Compliance**

Previous rulemaking changing the tuberculosis classifications of the States of Texas, California, New Mexico, and Minnesota from accredited free to modified accredited advanced allowed for delayed compliance with certain provisions of § 77.10. The interim rule that amended the classification of Texas was effective June 3, 2002, and published in the **Federal Register** on June 6, 2002 (67 FR 38841–38844, Docket No. 02–021–1); in a document published in the **Federal Register** on December 31, 2002, the date by which Texas had to comply with certain provisions of § 77.10 was extended from January 1, 2003, to September 30, 2003 (67 FR 79836–79837, Docket No. 02–021–3). The interim rule that amended the classification of California was effective and published in the **Federal Register** on April 25, 2003 (68 FR 20333–20336, Docket No. 03–005–1). The interim rule that amended the classification of New Mexico was effective and published in the **Federal Register** on July 24, 2003 (68 FR 43618–43621, Docket No. 03–044–1).<sup>1</sup> The

2003 interim rules changing the statuses of California and New Mexico from accredited-free to modified accredited advanced also allowed for a delay in the compliance date for certain provisions of § 77.10 until September 30, 2003.

The specific provisions of § 77.10 for which we delayed the compliance date were as follows:

- The identification of sexually intact heifers moving to approved feedlots and steers and spayed heifers moving to any destination (§ 77.10(b));
- The identification requirements for sexually intact heifers moving to feedlots that are not approved feedlots (§ 77.10(d)); and
- Because identification is required for certification, the certification requirements for sexually intact heifers moving to unapproved feedlots (§ 77.10(d)).

Initially, we had delayed the date of compliance with these requirements for the State of Texas until September 30, 2003, for two reasons. First, the size of the cattle industry in Texas necessitated additional time to implement the identification requirements of the regulations. Second, some cattle that had begun moving through channels prior to the change in Texas' tuberculosis status would not have been identified at their premises of origin. The compliance date was delayed for California and New Mexico to provide equitable treatment for producers in those States.

Based on the comments that we received on the interim rule for Texas, we concluded that the tuberculosis risk associated with the movement of nonbreeding cattle from modified accredited advanced States or zones through feeder channels to slaughter is low and that identification requirements for certain cattle destined for slaughter may be unnecessary. Therefore, on March 22, 2004, we published in the **Federal Register** (69 FR 13218–13219, Docket No. 03–072–2) an interim rule further delaying the date for compliance with the identification and certification requirements of § 77.10(b) and (d) for nonbreeding cattle from the States of Texas, California, and New Mexico, until further notice. The interim rule published in the **Federal Register** on January 30, 2006 (71 FR 4808–4810, Docket No. APHIS–2006–0004) changing the status of Minnesota from accredited-free to modified accredited advanced also allowed for a delay in the compliance date for certain provisions of § 77.10 until further notice. This delay of the date for compliance with the provisions of § 77.10 listed above also applies to the current rulemaking changing the tuberculosis status of a

zone in New Mexico from accredited-free to modified accredited advanced.

#### **Emergency Action**

This rulemaking is necessary on an emergency basis to prevent the spread of bovine tuberculosis within the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

#### **Executive Order 12866 and Regulatory Flexibility Act**

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

This emergency situation makes timely compliance with section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a regulatory flexibility analysis.

#### **Executive Order 12372**

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

#### **Executive Order 12988**

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

#### **Paperwork Reduction Act**

This rule contains no new information collection or recordkeeping requirements under the Paperwork

<sup>1</sup> New Mexico's accredited-free zone was established in a subsequent interim rule, effective and published in the **Federal Register** on July 22, 2005 (70 FR 42259–42261, Docket No. 04–068–1).

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

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

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

#### PART 77—TUBERCULOSIS

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

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

##### § 77.7 [Amended]

■ 2. Section 77.7, paragraph (b), is amended by removing the paragraph number “(1)” and by removing paragraph (b)(2).

##### § 77.9 [Amended]

■ 3. Section 77.9 is amended as follows:

■ a. In paragraph (a), by removing the word “None” and adding the words “New Mexico” in its place.

■ b. In paragraph (b), by removing the paragraph number “(1)” and by removing paragraph (b)(2).

Done in Washington, DC, this 5th day of September 2008.

**Kevin Shea,**

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

[FR Doc. E8–21117 Filed 9–10–08; 8:45 am]

**BILLING CODE 3410–34–P**

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2008–0449; Directorate Identifier 2007–SW–10–AD; Amendment 39–15669; AD 2008–19–02]

**RIN 2120–AA64**

#### Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, 230, and 430 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** We are superseding an existing airworthiness directive (AD) for Bell Helicopter Textron Canada (Bell) Model 222, 222B, 222U, 230, and 430 helicopters. That AD currently requires visually inspecting the main rotor hydraulic actuator support (support) to verify the presence of all dowel pins and sealant between the support and

transmission and verifying the proper torque of each attaching nut (nut). This AD requires the same actions as the existing AD and also requires repetitive actions at intervals not to exceed 600 hours time-in-service (TIS) or 12 months, whichever occurs first. This AD is prompted by the discovery that a 12-month compliance requirement was correctly included in an Emergency AD (EAD) that we issued but was inadvertently omitted when we published the Final rule; request for comments following the issuance of the EAD. The actions specified by this AD are intended to prevent failure of the support and subsequent loss of control of the helicopter.

**DATES:** Effective October 16, 2008.

The incorporation by reference of Bell Helicopter Textron Alert Service Bulletin Nos. 222–00–86, 222U–00–57, 230–00–18, and 430–00–17, all dated May 19, 2000, was approved previously for incorporation by reference by the Director of the Federal Register on March 2, 2001 (66 FR 10361, February 15, 2001).

**ADDRESSES:** You may examine the AD docket on the Internet at <http://regulations.gov> or in person at the Docket Operations office, U.S. Department of Transportation, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Bell Helicopter Textron Canada, 12,800 Rue de l’Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272.

**Examining the AD Docket:** The AD docket contains the Notice of proposed rulemaking (NPRM), the economic evaluation, any comments received, and other information. The street address and operating hours for the Docket Operations office (telephone (800) 647–5527) are in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after they are received.

#### FOR FURTHER INFORMATION CONTACT:

Tyrone Millard, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5439, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** On January 5, 2001, we issued EAD 2001–01–51 for Bell Model 222, 222B, 222U, 230, and 430 helicopters which requires, at specified time intervals, visually inspecting the support for the presence of all dowel pins and sealant

between the support and transmission and verifying the proper torque of each nut. That action was prompted by the failure of a support resulting in an accident of a Bell Model 222U helicopter. All retaining studs and shear pins were found sheared or pulled out at the junction between the support and transmission case. The requirements of that EAD are intended to prevent failure of the support and subsequent loss of control of the helicopter.

On February 2, 2001, we issued AD 2001–01–51, Amendment 39–12105, Docket No. 2000–SW–54–AD as a Final rule; request for comments (66 FR 10361, February 15, 2001). Since issuing that AD, we discovered that we inadvertently omitted the phrase “or 12 months, whichever occurs first,” from compliance paragraph (a) of the published final rule AD. Because the two versions of AD 2001–01–51 have different compliance times, we issued an NPRM on April 14, 2008 (73 FR 21853, April 23, 2008) proposing to supersede AD 2001–01–51 and require the following:

- Within 25 hours TIS, and thereafter at intervals not to exceed 600 hours TIS or 12 months, whichever occurs first:
- Visually inspecting the support and, if any pin is missing or if there is no sealant visible, further inspecting the support, the transmission case, studs, and dowel pins and repairing or replacing any unairworthy part before further flight;
- Verifying the torque of the nuts and, depending on the location and number of loose nuts, before further flight;
- Removing the support and further inspecting the support, transmission case, studs, and dowel pins and repairing or replacing any unairworthy part; and
- Retorquing certain nuts;
- At not less than 20 hours TIS nor more than 30 hours TIS after reinstalling a support for any reason, verifying the torque of the nuts.

By publishing the NPRM, we gave the public an opportunity to participate in developing this AD. However, we received no comment on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed.

We have reviewed Bell Alert Service Bulletin Nos. 222–00–86, 222U–00–57, 230–00–18, and 430–00–17, all dated May 19, 2000 (ASB’s), which specify, within 25 hours TIS, conducting a one-time inspection of the support installation by accomplishing a torque check of the support attaching nuts. In