

inconsistencies in the Board's fiscal operations.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Board's meeting was widely publicized and all Board members and alternate Board members, representing both large and small entities, were invited to attend the meeting and participate in Board deliberations. The Board itself is composed of 19 members, of which 18 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations.

An interim final concerning this action was published in the **Federal Register** on December 15, 2008 (73 FR 75927). Copies of the rule were mailed by the Board's staff to all Board members, producers, handlers, and other interested persons. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided a 60-day comment period which ended February 13, 2009. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

#### List of Subjects in 7 CFR Part 930

Tart cherries, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

#### PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ Accordingly, the interim final rule amending 7 CFR 930, which was published at 73 FR 75927 on December 15, 2008, is adopted as a final rule without change.

Dated: March 18, 2009.

Craig Morris,

Acting Associate Administrator.

[FR Doc. E9-6250 Filed 3-20-09; 8:45 am]

BILLING CODE 3410-02-P

#### DEPARTMENT OF AGRICULTURE

##### Animal and Plant Health Inspection Service

##### 9 CFR Part 77

[Docket No. APHIS-2008-0124]

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

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

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

**SUMMARY:** We are amending the bovine tuberculosis regulations to establish two separate zones with different tuberculosis risk classifications for the State of New Mexico. The entire State of New Mexico has been classified as modified accredited advanced; however, all its affected herds are located in a small area along the State's eastern border. We have determined that New Mexico meets our requirements for zone classification. Therefore, we are removing New Mexico from the list of modified accredited advanced States, adding an area consisting of Curry and Roosevelt Counties, NM, to the list of modified accredited advanced zones, and adding the remainder of the State to the list of accredited-free zones. This action relieves restrictions on the interstate movement of cattle and bison from these areas of New Mexico outside of the modified accredited advanced zone in two counties.

**DATES:** This interim rule is effective March 23, 2009. We will consider all

comments that we receive on or before May 22, 2009.

**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-2008-0124> 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-2008-0124, 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-2008-0124.

**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 (APHIS) 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 (referred to below as the regulations) and in the Bovine Tuberculosis Eradication Uniform Methods and Rules, 1999, which is incorporated by reference into the regulations.

### Conditions for Zone Classification

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

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

all testing for each zone within the State within 30 days of the testing.

6. The State must enter into a memorandum of understanding with APHIS in which the State agrees to adhere to any conditions for zone recognition particular to that request.

### Request for Zone Classification in New Mexico

In an interim rule effective and published in the **Federal Register** on September 11, 2008 (73 FR 52775–52777, Docket No. APHIS–2008–0068), we amended the bovine tuberculosis regulations by adding New Mexico to the list of modified accredited advanced States. Prior to the publication of the September 2008 interim rule, portions of Curry and Roosevelt Counties, NM, had been classified as a modified accredited advanced zone, and the rest of the State of New Mexico was classified as accredited-free. We reclassified the entire State of New Mexico as a modified accredited advanced State because two affected herds had been detected in New Mexico's accredited-free zone since April 2007. Both of the affected herds were located in Curry County, outside the modified accredited advanced zone, along a portion of New Mexico's eastern border with Arizona. No tuberculosis-affected herds were found in the remainder of the State. Therefore, we have received from the State of New Mexico a request for zone classification for bovine tuberculosis.

According to the regulations, if bovine tuberculosis is detected in a portion of a State, the State may request split-State status via partitioning into specific geographic regions or zones with differential status designations. With regard to cattle and bison, State animal health officials in New Mexico have demonstrated to APHIS that New Mexico, excluding Curry and Roosevelt Counties, meets the criteria for accredited-free status set forth in the definition of *accredited-free State or zone* in § 77.5 of the regulations.

Based on our evaluation of New Mexico's request in light of the criteria set forth in the regulations, we have determined that New Mexico meets the requirements listed above for zone classification and that, except for Curry and Roosevelt Counties, New Mexico meets the criteria for accredited-free status set forth in the definition of *accredited-free State or zone* in § 77.5. Therefore, we are classifying two zones in New Mexico as follows:

- The modified accredited advanced zone, which is the smaller of the two, consists of the New Mexico counties of Curry and Roosevelt.

- The accredited-free zone consists of all of the State of New Mexico except for Curry and Roosevelt Counties.

### Immediate Action

Immediate action is warranted to relieve restrictions on the interstate movement of cattle and bison from the newly classified accredited-free zone in New Mexico. 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 action 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.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

New Mexico has been listed as a modified accredited advanced State for bovine tuberculosis. This interim rule removes New Mexico from the list of modified accredited advanced States, adds an area in the eastern portion of the State to the list of modified accredited advanced zones, and adds the remainder of the State to the list of accredited-free zones. Modified accredited advanced status entails various restrictions on interstate movement of cattle. Reclassification to accredited-free status reduces or removes specific testing requirements. The Regulatory Flexibility Act requires agencies to evaluate the potential effects of proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Section 605 of the Regulatory Flexibility Act allows an agency to certify that a rule will not have a significant economic impact on a substantial number of small entities. Following is the factual basis for such certification in this case.

### Description and Estimate of Small Entities Affected by the Interim Rule

Entities that will be directly affected by the rule are New Mexico beef and dairy farms that engage in interstate movement of certain types of cattle. Operations in the accredited-free zone will benefit from reduced costs associated with bovine tuberculosis testing.

The cattle industry plays an important role in New Mexico's economy. There were 7,300 cattle and calf operations in New Mexico in 2008 with a total inventory of 1.53 million head. About 77 percent of the State's cattle are

located in what will be the accredited-free zone.<sup>1</sup> State-wide cash receipts from cattle and calves and dairy products totaled \$951 million and \$1.4 billion, respectively, in 2007. Eight-year average (2000–2007) cash receipts for cattle and calves and dairy products were \$858 million and \$905 million, respectively.<sup>2</sup>

The Small Business Administration (SBA) has established guidelines for determining which businesses are considered small. According to the SBA's size standards for beef cattle ranching and farming (North American Industry Classification System [NAICS] 112111) and for dairy cattle and milk

production (NAICS 112120), operations with not more than \$750,000 in annual sales are considered small entities. The vast majority of beef operations in New Mexico are considered small, while most dairy operations are not. In 2007, more than 97 percent of cattle and calf farms generated less than \$500,000 in cash receipts, and less than 1 percent generated \$1 million or more. Only about 27 percent of dairy farms generated less than \$500,000 in cash receipts and about 71 percent generated \$1 million or more.<sup>3</sup> The composition of New Mexico's cattle inventory is shown in table 1.

TABLE 1—NEW MEXICO CATTLE INVENTORY, JANUARY 1, 2008

Type		Number	Percentage of total
Beef cows .....	.....	460,000	30.1
Milk cows .....	.....	340,000	22.2
Heifers .....	.....	.....	.....
	Beef cow replacements .....	90,000	5.9
	Milk cow replacements .....	130,000	8.5
	Other heifers .....	100,000	6.5
Total heifers .....	.....	320,000	20.9
Steers .....	.....	170,000	11.1
Bulls .....	.....	40,000	2.6
Calves .....	.....	200,000	13.1
Total .....	.....	1,530,000	.....

Source: NASS, USDA.

### Expected Effects of the Rule

New Mexico has been listed as a modified accredited advanced State. This rule reclassifies nearly all of the State as accredited-free. The reclassification of an area to accredited-free status from modified accredited advanced status removes certain interstate movement restrictions for cattle capable of breeding. These restrictions include a negative bovine tuberculosis test within 60 days of the interstate movement of sexually intact cattle and bison from a herd without accredited status. This testing requirement will no longer apply to cattle moving out of the accredited-free zone.

Cattle herd owners in the accredited-free zone will see a reduction in pre-movement bovine tuberculosis testing requirements as a result of this rule and will therefore benefit from reduced costs associated with that bovine tuberculosis testing. The majority of cattle herds in New Mexico are located in areas that are

reclassified as accredited-free in this rule and are therefore likely to benefit.

As a result of this rule, breeding cattle moving interstate from non-accredited herds in the accredited-free zone no longer require a negative bovine tuberculosis test within 60 days of movement. According to the State of New Mexico, 84,398 cattle were moved out of New Mexico for breeding purposes in 2008.<sup>4</sup> Just under half (42,081) of these animals were moved interstate from the area that is reclassified to accredited-free status in this rule. Bovine tuberculosis testing, including veterinary fees, costs about \$10 to \$15 per head. Based on these costs per animal, we expect annual cost savings associated with reduced testing of breeding cattle moving out of the State to total between \$420,810 and \$631,215. The more a herd owner in the accredited-free zone engages in the interstate movement of breeding cattle, the greater will be savings associated

with the reduction in movement restrictions.

A large number of the cattle herds in the State will see a reduction in pre-movement bovine tuberculosis testing requirements as a result of this rule, and will therefore benefit from reduced costs associated with that bovine tuberculosis testing. However, bovine tuberculosis testing costs are small when compared to the value of the cattle tested, and the expected savings therefore are also relatively small. On January 1, 2007, beef cattle in New Mexico had an average per animal value of \$1,060.<sup>5</sup> The average value of dairy cattle is considerably higher, given the value of milk produced. The savings in bovine tuberculosis testing costs represent no more than about 1.4 percent of the average per-head value of beef cattle in New Mexico (\$15/\$1,060) and an even smaller percentage of the average value of dairy cattle in the State. Thus, while herd owners engaged in interstate movement of feeding and breeding

<sup>1</sup> 2007 New Mexico Agricultural Statistics, USDA/National Agricultural Statistics Service (NASS), New Mexico Department of Agriculture.

<sup>2</sup> USDA/Economic Research Service *Cash Receipts, by Commodity Groups and Selected*

*Commodities, United States and States, 2000–2007.* <http://www.ers.usda.gov/Data/farmincome/FinfidmuXls.htm>.

<sup>3</sup> 2007 Census of Agriculture. NASS, USDA.

<sup>4</sup> New Mexico Livestock Board.

<sup>5</sup> Meat Animals Production, Distribution and Income 2007 Summary. April 2008. Agricultural Statistics Board. NASS, USDA.

cattle will benefit from time savings and reduced costs associated with bovine tuberculosis testing, however, the savings will be relatively small.

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

#### Executive Order 12372

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

#### Executive Order 12988

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

#### Paperwork Reduction Act

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

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

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

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

#### PART 77—TUBERCULOSIS

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

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

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

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

\* \* \* \* \*

(b) The following are accredited-free zones:

(1) A zone in Michigan known as the Upper Peninsula that comprises Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft Counties.

(2) All of the State of New Mexico except for the zone that comprises Curry

and Roosevelt Counties described in § 77.9(b)(3).

\* \* \* \* \*

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

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

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

(b) The following are modified accredited advanced zones:

(1) All of the State of Michigan except for the zones that comprise those counties or portions of counties in Michigan described in § 77.7(b)(1) and § 77.11(b)(1).

(2) All of the State of Minnesota except for the zones that comprise those counties or portions of counties in Minnesota described in § 77.11(b)(2).

(3) The zone in the State of New Mexico that comprises Curry and Roosevelt Counties.

\* \* \* \* \*

Done in Washington, DC, this 17th day of March 2009.

**Kevin Shea,**

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

[FR Doc. E9–6252 Filed 3–20–09; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF ENERGY

### 10 CFR Parts 430 and 431

RIN 1904–AB74

#### Energy Conservation Standards for Certain Consumer Products and Commercial and Industrial Equipment

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Department of Energy (DOE) is publishing this technical amendment to place the energy conservation standards and test procedures, and related definitions, prescribed in the Energy Independence and Security Act of 2007 (EISA 2007) for certain consumer products and commercial and industrial equipment in the Code of Federal Regulations.

**DATES:** *Effective Date:* March 23, 2009. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of March 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** Michael J. McCabe, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building,

Mail Station EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9155, e-mail:

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*Francine.Pinto@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** This final rule incorporates by reference the following industry standards:

- ANSI C78.20–2003, Revision of ANSI C78.20–1995 (“ANSI C78.20”), American National Standard for electric lamps—A, G, PS, and Similar Shapes with E26 Medium Screw Bases, approved October 30, 2003;

- ANSI C78.21–1989, American National Standard for Electric Lamps—PAR and R Shapes, approved March 3, 1989;

- ANSI C78.21–2003, Revision of ANSI C78.21–1995 with all supplements, American National Standard for Electric Lamps—PAR and R Shapes, approved October 30, 2003;

- ANSI C78.43–2004, Revision and consolidation of ANSI C78.1372–1997, .1374–1997, .1375–1997, .1376–1997, .1377–1997, .1378–1997, .1379–1997, .1382–1997, .1384–1997, and .1650–2003, (“ANSI C78.43”), American National Standard for electric lamps: Single-Ended Metal Halide Lamps, approved May 5, 2004.

- ANSI C79.1–1994, American National Standard for Nomenclature for Glass Bulbs—Intended for Use with Electric Lamps, approved March 24, 1994;

- ANSI C79.1–2002, American National Standard for Electric Lamps—Nomenclature for Glass Bulbs Intended for Use with Electric Lamps, approved September 16, 2002;

- ANSI ANSLG C81.61–2006, Revision of ANSI C81.61–2005 (“ANSI C81.61”), American National Standard for electrical lamp bases—Specifications for Bases (Caps) for Electric Lamps, approved August 25, 2006;

- ANSI C82.6–2005, Proposed Revision of ANSI C82.6–1985 (“ANSI C82.6”), American National Standard for lamp ballasts—Ballasts for High-Intensity Discharge Lamps—Methods of Measurement, approved February 14, 2005.

Copies of the materials are available from: American National Standards Institute (ANSI), 25 W. 43rd Street, 4th Floor, New York, NY 10036, 212-642-4900, or go to <http://www.ansi.org>.

- ASTM C518–04, (“ASTM C518”), Standard Test Method for Steady-State