

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****9 CFR Part 77**

[Docket No. 99-038-5]

Tuberculosis in Cattle, Bison, and Captive Cervids; State and Zone Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the bovine tuberculosis regulations to establish several new levels of tuberculosis risk classifications to be applied to States and zones within States. Additionally, we are providing for the classification of States and zones according to their tuberculosis risk with regard to captive cervids. We are also amending the regulations to increase the amount of testing that must be done before certain cattle and bison may be moved interstate. These changes are necessary to help prevent the spread of tuberculosis and to further the progress of the domestic tuberculosis eradication program.

EFFECTIVE DATE: November 22, 2000.

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SUPPLEMENTARY INFORMATION:**Background**

Bovine tuberculosis is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, 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. Federal regulations implementing the National Cooperative State/Federal Bovine Tuberculosis Eradication Program are contained in 9 CFR part 77, "Tuberculosis" (referred to below as the regulations), and in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (UMR), January 22, 1999, edition, which is incorporated by reference into the regulations.

Interim Rules

On November 1, 1999, we published in the **Federal Register** (64 FR 58769-58780, Docket No. 99-008-1) an interim

rule that was effective October 20, 1999, and that amended the regulations to do the following: (1) Allow a State to be divided into two zones for tuberculosis risk classification; (2) clarify the conditions for assigning a particular risk classification for tuberculosis; and (3) increase the amount of testing that must be done before certain cattle and bison may be moved interstate. The interim rule also recognized two different zones in Michigan, one classified as accredited-free and the other as nonmodified accredited. The interim rule did not change the tuberculosis risk classification categories in use at that time (accredited-free, accredited-free (suspended), modified accredited, and nonmodified accredited.)

We solicited comments concerning our interim rule for 60 days ending January 3, 2000. We received 64 comments by that date. They were from livestock owners, representatives of State and local governments, a farm bureau, universities, veterinary associations, and other members of the public.

Three of the comments supported the interim rule as written. The issues raised by the remainder of the comments were related to our recognition of the two zones in Michigan and the fact that one of the zones was classified as nonmodified accredited. However, on June 28, 2000, we published another interim rule in the **Federal Register** (65 FR 39780-39782, Docket No. 00-055-1), effective as of June 22, 2000, in which we removed the split-State status of Michigan and classified the entire State as nonmodified accredited. We solicited comments on our interim rule for 60 days ending August 28, 2000, and received no comments by that date.

Proposed Rule

On March 7, 2000, we published in the **Federal Register** (65 FR 11912-11940, Docket No. 99-038-1) a proposal to amend the regulations to do the following: (1) Establish several new levels of tuberculosis risk classifications to be applied to States and zones within States; (2) classify States and zones according to their tuberculosis risk with regard to captive cervids; (3) specify that the regulations apply to goats as well as to cattle, bison, and captive cervids; and (4) increase the amount of testing that must be done before certain cattle, bison, and goats may be moved interstate.

We solicited comments concerning our proposal for 45 days ending April 21, 2000. On March 24, 2000, we published in the **Federal Register** (65 FR 15877-15878, Docket No. 99-038-2)

a correction to our proposed rule. We reopened and extended the deadline for comments on the proposed rule until May 8, 2000, in a document published in the **Federal Register** on May 1, 2000 (65 FR 25292, Docket No. 99-038-3). In a document published in the **Federal Register** on May 31, 2000 (65 FR 34598-34599, Docket No. 99-038-4), we reopened and extended the deadline for comments until June 16, 2000, and advised the public we would host two public hearings on the proposed rule. We held a public hearing in Albuquerque, NM, on June 14, 2000, and another in Lansing, MI, on June 15, 2000.

We received 114 comments on our proposed rule by June 16, 2000. They were from livestock owners; agricultural product manufacturers; representatives of State, local, and foreign governments; farm bureaus; livestock industry associations; universities; a veterinary association; a fish and wildlife association; and other members of the public. Several commenters supported the proposed rule as written. Others supported the rule with changes or simply suggested changes. We discuss the comments below by topic.

Goats

We proposed to make the tuberculosis provisions that apply to cattle and bison also apply to goats, and to group cattle, bison, and goats in proposed subpart B of part 77.

One commenter specifically supported the addition of goats to the regulations as proposed. A number of commenters stated that the regulations should not apply to goats. The commenters stated that no case of bovine tuberculosis has been found in goats used as livestock in the United States and that it would be less costly and burdensome to address tuberculosis in goats according to individual herd status. Other commenters stated that the regulations should apply only to goats that produce milk for human consumption.

A number of other commenters recommended that goats be included in a separate subpart of the regulations and not be grouped with cattle and bison. Some commenters who supported including goats in a separate subpart stated that including goats with other livestock in determining tuberculosis prevalence in a State or zone could "dilute" the numbers of infected cattle or bison herds, allowing an unwarranted upgrade in a State's or zone's status without a decrease in actual disease prevalence. Others expressed concern that an incidence of tuberculosis in a herd of goats could adversely affect the

tuberculosis status of a State with regard to cattle and bison.

Based on the comments we received, we are not applying the provisions of this final rule to goats. Although we are not aware of any reported incidence of tuberculosis in goats used as livestock, it has been demonstrated among goats held for exhibition that goats can harbor and transmit the disease. However, we consider it necessary to review further the type and amount of surveillance for tuberculosis that is being carried out with regard to goats used for livestock. Currently, it appears that insufficient surveillance is being conducted in goat herds to apply a State/zone tuberculosis classification system to goats. Once we have completed our review, we will determine how best to address the issue of goats and, if necessary, will propose rulemaking at that time.

References to Goats in the Remainder of This Supplementary Information

As noted, we proposed to apply the same regulations to goats as to cattle and bison, and to consider goat herds along with cattle and bison herds when determining the tuberculosis prevalence among herds in a State or zone. However, as discussed above, we are not including goats in this final rule. Therefore, to simplify our discussion of the comments we received regarding the proposed rule, and to avoid any confusion as to whether goats are covered by this final rule, when we refer in this document to the provisions in the proposed rule that applied to cattle, bison, and goats, and when we refer to comments received on those provisions, we will discuss them only as they apply to cattle and bison.

Consistency of Terms

One commenter noted that, in some cases in the proposed regulations, we used the term "sexually intact" to describe certain animals covered by the regulations, and, in other cases, we used the term "breeding" to describe similar animals. The commenter stated that, if the two terms are interchangeable, we should use just one for consistency.

It was our intent when referring to "breeding animals" to mean "sexually intact" animals. For consistency, therefore, wherever we referred to breeding animals in the proposed rule, we refer to sexually intact animals in this final rule.

One commenter noted that, in some cases in the proposed regulations, we use the term "State animal health official," and in other places in the regulations we use the term "livestock sanitary official." The commenter recommended that the term "livestock

sanitary official" be replaced with the term "State animal health official." In the regulations, we use the two terms cited by the commenter to mean the same State official. Therefore, to eliminate confusion, in this final rule we are using the term "State animal health official" throughout, instead of "livestock sanitary official."

Grouping of Types of Animals

One commenter stated that, instead of grouping cattle and bison when considering the tuberculosis status of a State or zone, each type of animal should be considered separately in the regulations.

We will continue to consider cattle and bison together in determining the tuberculosis status of a State or zone. Because they are similar physically and in their uses, we have considered cattle and bison together with regard to tuberculosis for a number of years. Grouping the two types of animals has proven effective in the tuberculosis eradication program and has been supported by the industries affected by the regulations.

One commenter stated that, for purposes of regulation, bison, captive cervids, beef cattle, and dairy cattle should be considered separately. A number of other commenters, limiting their comments to the distinction between beef cattle and dairy cattle, stated that the two usages of cattle should be kept separate for purposes of establishing the tuberculosis status of a State or zone. The commenters stated that the risk of animals in confinement (primarily dairy) operations exposing other animals to tuberculosis is greater than the risk posed by nonconfinement (primarily beef) operations. Another commenter stated that, because it is unlikely that large dairy herds affected with tuberculosis would be depopulated, the existence of affected dairy herds would unfairly cause a State or zone, including nonconfinement herds, to be classified at a higher risk than would otherwise be warranted. One commenter stated that the status of a State should be based on the prevalence of tuberculosis among beef herds and tuberculosis eradication efforts in dairy herds, coupled with in-State movement controls.

We are making no changes based on these comments. Although cattle in a dairy herd are generally retained in that herd throughout their lifetime, such is not always the case, and the presence of tuberculosis within a dairy herd can pose a tuberculosis threat to cattle outside the herd. Dairy herds may include bulls that are ultimately sold for beef. Additionally, some owners

maintain both dairy herds and beef herds on the same premises.

In our proposed rule, we stated that, although we were proposing to keep State and zone classifications for cattle and bison independent of classifications for captive cervids, our goal is to have, by the year 2010, each State or zone with one tuberculosis classification that would apply to all regulated animals in the State or zone. One commenter stated that captive cervid classifications should not be combined in the future with cattle and bison classifications. In our proposed rule, we stated that our rationale for keeping classifications for captive cervids separate from those for cattle and bison at this time was that, in general, programs for surveillance for tuberculosis in captive cervids are not as advanced as those for cattle and bison. However, in order to promote the eradication of tuberculosis in livestock in the United States, we consider it essential that surveillance for tuberculosis among captive cervids be expanded and become more reliable. We expect that our establishing tuberculosis risk classifications for captive cervids in this final rule will promote improved surveillance, reporting, and removal of infected captive cervids, and that it is reasonable to project that, by 2010, captive cervids can be considered together with cattle and bison in determining a State's or zone's tuberculosis risk classification. However, we will continue to evaluate this issue and will make no final decisions until such a change in the regulations has been proposed in the **Federal Register** and the public has had the opportunity to comment on it.

Wording Change

In §§ 77.10, 77.12, and 77.14, respectively, we address the interstate movement of cattle and bison from modified accredited advanced, modified accredited, and accreditation preparatory States and zones. In each of these sections, paragraph (b) provides movement requirements for steers and spayed heifers, and for officially identified sexually intact heifers moved to an approved feedlot. Several commenters stated that the way those provisions were worded, it was not clear if the only steers and spayed heifers being referred to were those moved to an approved feedlot. It was not our intent to limit the provisions in question, as they apply to steers and spayed heifers, to steers and spayed heifers that are moved to an approved feedlot. Our intent was to refer to all steers and spayed heifers, which by standard industry practice are moved to either a feedlot, though not necessarily

to an approved feedlot, or to slaughter. We are rearranging the wording in this final rule to make it clear the stipulation that the animals be moved to an approved feedlot applies only to sexually intact heifers.

Identification Requirements

In §§ 77.10(b), 77.12(b), and 77.14(b) of our proposed rule, regarding movement of cattle and bison from modified accredited advanced, modified accredited, and accreditation preparatory States and zones, respectively, we provided that sexually intact heifers moved interstate to an approved feedlot must be officially identified, and that steers and spayed heifers moved interstate from such States or zones must be either individually identified by a registration name and number or officially identified. In § 77.2 of the proposal, we defined *officially identified* to mean “identified by means of an official eartag or by means of an individual tattoo or hot brand that provides unique identification for each animal.”

One commenter specifically supported the requirement for the identification of sexually intact heifers moved to an approved feedlot, steers, and spayed heifers when those animals are moved from a modified accredited advanced State or zone. A number of commenters opposed the requirement for the individual identification of the cattle and bison described above for movement from modified accredited advanced States and zones. Those in opposition to the requirement expressed concern that gathering and processing the animals in order to identify them would be extremely difficult, would generate significant labor costs, would cause the animals to lose weight, and would increase the incidence of injury and death among the animals.

Several commenters recommended that the regulations allow the use of means of identification other than unique individual identification, including premises identification such as identification of lot, identification applied by the owner, and identification by brand. One commenter recommended that a New Mexico brand be allowed as official identification from that State until an animal is moved to a feedlot, at which point an official eartag should be required. One commenter recommended that States be allowed to submit to the Animal and Plant Health Inspection Service (APHIS) a proposal for the use of identification that would provide adequate traceback capabilities and work for that individual State.

The purpose of requiring a unique individual identification of cattle and

bison is to allow for traceback in the event an animal is determined to be infected with or exposed to tuberculosis. If an animal is found to be infected with or exposed to tuberculosis in slaughter channels, it is necessary for control and eradication purposes to be able to identify the premises from which the animal originated. We have determined from our experience enforcing the regulations that, historically, individual identification unique to the animal is the identification that has provided the most effective traceback capability. However, we agree there are other types of identification that, properly implemented, could allow for the necessary traceback.

We are, therefore, providing in §§ 77.10, 77.12, and 77.14 of this final rule that sexually intact heifers moved to an approved feedlot, steers, and spayed heifers must be either officially identified or, alternatively, be identified by means of premises of origin identification. In order to meet the identification requirement, premises of origin identification must meet the definition we are adding to § 77.2. In that section, we define *premises of origin identification* to mean either a brand registered with an official brand registry, or an APHIS-approved eartag or tattoo that bears the premises of origin identification code. The premises of origin identification code must consist of the State postal abbreviation followed by a unique number or name that is assigned by a State or Federal animal health official to the premises on which the animals originated and that, in the judgment of the State animal health official or area veterinarian in charge, is epidemiologically distinct from other premises. We are not allowing the option for premises of origin identification for cattle other than officially identified sexually intact heifers moved to an approved feedlot, steers, and spayed heifers. Because cattle used for breeding are customarily moved from a herd to a number of other premises, we consider it necessary to require individual unique identification for such animals.

In this final rule, we are making a change to multiple sections to clarify the identification requirements for interstate movement. In §§ 77.10(b) and (d), 77.12(b) and (d), 77.14(b), (c), and (d), 77.25(b), 77.27(c), and 77.29(b) and (c), the regulations we proposed required identification of certain animals by means of either official identification or individual identification by a registration name and number. However, individual identification by a registration name and

number is not something different from official identification, but rather, is simply one method of official identification. To avoid confusion, we are removing the references to “individual identification by a registration name and number” in each of the sections listed.

Definition of Officially Identified

Several commenters requested that the definition of *officially identified* in proposed § 77.2 be expanded to include other means of identification. The additional means of identification recommended by commenters included electronic identification such as radio frequency identification devices, as well as transponders placed under the skin or in the rumen. Another commenter stated that APHIS should recognize as “an individual tattoo” a breed registration tattoo or another tattoo with third party verification.

We are making no changes to the definition of *officially identified* in this rule. However, we are in the process of developing a national animal identification program for which we would propose to recognize electronic identification and for which we will consider the commenter’s recommendations regarding what is acceptable as an individual tattoo.

Definition of Whole Herd Test

In proposed § 77.14 for cattle and bison, and in proposed § 77.29 for captive cervids, we provided that, for movement from an accreditation preparatory State or zone, animals that are sexually intact animals and are not from an accredited herd must, among other things, be accompanied by a certificate stating that they originated in a herd that has undergone a tuberculosis herd test with negative results conducted within 1 year prior to the date of movement. One commenter stated that our requirement for an entire herd test in those provisions could be confused with the testing required by the existing regulations to achieve accredited herd status. The commenter recommended eliminating such confusion by referring to the test of an entire herd as a “whole herd test” when it is used to qualify animals in the herd for interstate movement. The commenter recommended that we clarify the distinction further by adding a definition of *whole herd* to mean “any isolated group of cattle or bison 12 months of age or older maintained on common ground for any purpose, or two or more groups of cattle or bison under common ownership or supervision, geographically separated but that have an interchange or movement of cattle or

bison without regard to health status.” The commenter further recommended that we include a comparable definition of whole herd for captive cervids.

We agree that it would be useful to make clear the distinction between the herd test required for movement from an accreditation preparatory State or zone and the testing required for accredited herd status. We are, therefore, adopting some of the commenter’s recommendations. However, we believe that adding a definition of *whole herd* to the regulations might cause confusion with the definition of *herd* that is already in the regulations, which is the same as the definition of *whole herd* recommended by the commenter, except for the reference to a minimum age for testing. Therefore, we are adding, instead, a definition of *whole herd test* to § 77.5 for cattle and bison to read “an official tuberculin test of all cattle and bison that are 12 months of age or older in a herd, or that are less than 12 months of age and were not born into the herd, except those cattle and bison that are less than 12 months of age and were born in and originated from an accredited herd.”

We are adding a comparable definition of *whole herd test* to § 77.20 for captive cervids. However, to do so, we must revise the definition of *whole herd test* that already exists in the definitions regarding captive cervids. In that existing definition, *whole herd test* is defined as “an official tuberculosis test of all test eligible captive cervids in a herd.” The definition was included in the regulations to refer to the testing under the existing regulations that is required for a herd to achieve a particular risk status. Because “test eligible captive cervids” in the existing regulations refers to captive cervids 12 months of age or older in a herd, and all captive cervids in the herd less than 12 months of age that were not born into the herd, except those captive cervids less than 12 months of age that originated from an accredited herd, we are using that description in the revised definition rather than the term “test eligible captive cervids.” This will make the definition of *whole herd test* with regard to captive cervids consistent with the definition we are adding with regard to cattle and bison.

We are not requiring that most animals younger than 12 months of age be tested as part of a whole herd test. The reduced likelihood that such young animals have developed tuberculosis does not justify the time and expense of testing them as part of a whole herd test. If a herd contains tuberculosis-infected animals, the infection will likely be diagnosed by testing all animals 12

months of age or older. However, if the cattle or bison less than 12 months of age were not born into the herd and did not originate from an accredited herd, they must be tested as part of the whole herd test due to the possibility they may have been exposed to tuberculosis before entering the herd.

Whole Herd Test

We proposed in § 77.12(d) that cattle and bison that are sexually intact animals and that are not from an accredited herd could not be moved interstate from a modified accredited State or zone unless accompanied by a certificate stating that they were negative to two official tuberculin tests conducted at least 60 days apart and no more than 6 months apart, with the second test conducted within 60 days prior to the date of movement. Several commenters recommended that we instead require that the animals have originated in a herd that has undergone a tuberculosis herd test with negative results within 1 year prior to the date of movement, and that the individual animals to be moved have been negative to one additional official tuberculin test conducted within 60 days prior to the date of movement.

We agree with the commenters that requiring a whole herd test and one individual test will better ensure that the animals to be moved are not originating from a herd affected with tuberculosis and have changed § 77.12(d) accordingly. An equivalent provision in § 77.27(c) will apply to captive cervids, except that the additional test must be conducted within 90 days prior to movement. However, because of the efficacy of a whole herd test in determining whether tuberculosis exists in a herd, we are providing that if the animals are moved within 6 months following the whole herd test, there is no need for an individual test.

A number of commenters stated that States and zones that would receive steers and spayed heifers from accreditation preparatory States and zones have serious reservations with the provisions in proposed § 77.14(b) that provide that such animals may be moved interstate if accompanied by a certificate stating that they have been classified negative to two tuberculin tests conducted at least 60 days apart and no more than 6 months apart. According to the commenters, because of “the known pitfalls with regard to detecting exposure, incubation, or infection in this usually very young class of animals with the available test technology,” it would be advisable that such animals be allowed to move

interstate only after the herd tests negative to one whole herd test and one individual animal test.

For the same reasons discussed above regarding §§ 77.12(d) and 77.27(c), we are making the change to § 77.14(b) recommended by the commenters. However, again, because of the efficacy of a whole herd test in determining whether tuberculosis exists in a herd, we are providing that if the animals are moved within 6 months following the whole herd test, there is no need for an individual test.

Additionally, we are making a change to both §§ 77.14(d) and 77.29(c), which provide testing requirements for cattle and bison, and captive cervids, respectively, that are sexually intact animals not from an accredited herd that are to be moved from an accreditation preparatory State or zone. Both of those paragraphs require that such animals to be moved interstate must have originated in a herd that has undergone a whole herd test with negative results within 1 year prior to the date of movement and have also been classified negative to two additional official tests for tuberculosis. For cattle and bison, the tests must have been conducted at least 60 days apart and no more than 6 months apart, with the second test conducted at least 60 days prior to movement. For captive cervids, the tests must have been conducted at least 90 days apart and no more than 6 months apart, with the second test conducted at least 90 days prior to movement. For the same reason noted above, we are providing in this final rule that if the animals are moved interstate within 6 months following the whole herd test, they need test negative to only one additional official test for tuberculosis.

One commenter recommended that the proposed interstate movement requirements for cattle and bison be changed so that, in each case where we proposed to require an individual animal official tuberculin test, a whole herd test be required instead. The commenter stated that the caudal-fold test (one of the tests listed in the UMR as an official tuberculin test for cattle and bison) is a whole herd screening test and is meant to be used on the whole herd. The commenter stated that testing individual animals does not give an overall assessment of the entire herd and that individual nonresponders to the caudal-fold test can be easily found in infected herds.

We consider each of the official tuberculin tests listed in the UMR reliable in determining the tuberculosis status of an individual animal. However, as discussed above, we are

increasing the number of situations under which a whole herd test is required.

Movement From Nonaccredited States and Zones

In § 77.16 of our proposed rule, we proposed to limit interstate movement from nonaccredited States and zones to: (1) Cattle and bison being moved directly to slaughter at an approved slaughtering establishment; and (2) cattle and bison that are from an accredited herd that completed the testing necessary for accredited status within 1 year prior to the date of movement and that test negative to an official tuberculin test conducted within 60 days prior to the date of movement. In § 77.31 of our proposed rule, we provided that the only captive cervids that would be allowed to be moved interstate from a nonaccredited State or zone were those being moved directly to slaughter at an approved slaughtering establishment; those from qualified or monitored herds that meet the requirements in §§ 77.36 or 77.37 for interstate movement from those herds; and those that are moved in an officially sealed means of conveyance, accompanied by a certificate showing that they are from an accredited herd that completed the testing required for accredited herd status with negative results within 1 year prior to the date of movement and that they were negative to an official tuberculin test conducted within 90 days prior to the date of movement.

One commenter stated that no movement of regulated animals should be allowed from nonaccredited States and zones, except for movement directly to slaughter. The commenter said that no testing in nonaccredited States and zones is reliable, including that performed to obtain accredited herd status.

Upon consideration of the issue raised by the commenter, we are making a change to §§ 77.16 and 77.32. In this final rule, we are limiting interstate movement from a nonaccredited State or zone to those animals being moved to slaughter at an approved slaughtering establishment. A nonaccredited State or zone will, by definition, be one that does not meet the standards of the UMR or in which tuberculosis is prevalent in 0.5 percent or more of the total number of herds of the animals covered by the regulations. Therefore, a nonaccredited State or zone could be one in which the tuberculosis prevalence rate is significantly high or unknown. To maintain accredited herd status, a herd of cattle or bison must be retested annually, and a herd of captive cervids

must be tested biennially. In a State or zone of high or unknown risk, the length of time between herd testing could create an unacceptable risk that a herd will become affected with tuberculosis between the most recent testing and the date animals from the herd are moved interstate. Therefore, we are providing in §§ 77.16 and 77.31 that animals covered by the regulations may be moved interstate from a nonaccredited State or zone only if they are accompanied by VS Form 1-27 and are moved interstate for slaughter in an officially sealed means of conveyance directly to an approved slaughtering establishment.

Testing of Animals From a Modified Accredited Advanced State or Zone

We proposed to require in § 77.10(d) that if cattle and bison to be moved interstate from a modified accredited advanced State or zone are sexually intact animals that are not from an accredited herd, the animals must be accompanied by a certificate stating that they have been classified negative to an official tuberculin test conducted within 60 days prior to the date of movement.

Several commenters opposed the requirement for the testing of such animals from modified accredited advanced States and zones. One of the commenters said we were being inconsistent in requiring such testing because we proposed to allow sexually intact heifers that are moved to an approved feedlot, steers, and spayed heifers to be moved interstate from modified accredited advanced States and zones without being tested. Another commenter said that requiring testing of breeding animals moved interstate from modified accredited advanced States and zones would be unnecessary in those States that already restrict movement from premises containing cattle affected with tuberculosis.

We are making no changes based on these comments. Because a modified accredited advanced State or zone is one in which tuberculosis exists, cattle and bison moved interstate from such a State or zone pose an unacceptable risk of being infected with tuberculosis and transmitting the disease to other cattle and bison unless conditions exist or measures are taken to reduce such a risk to a negligible level. Sexually intact heifers moved to an approved feedlot, steers, and spayed heifers present a negligible risk of spreading tuberculosis because they are moved either directly to slaughter or to feedlots where they come in contact only with other animals that are being moved to slaughter. However, because sexually intact cattle and bison from modified accredited

advanced States and zones that could potentially be used for breeding present a greater risk of being commingled with animals not being moved to slaughter, we consider it necessary that such animals be tested for tuberculosis with negative results before being moved. Such testing can either be the testing that is necessary for accredited herd status or testing that is done within 60 days prior to interstate movement.

Concern Regarding Surveillance Requirements in Texas

One commenter expressed concern that requiring a tuberculosis test for cattle moved from Texas after being imported from Mexico would unnecessarily devalue animals that would otherwise be held in Texas for a short time after importation for sorting, classifying, sizing, and processing.

We proposed to list Texas as a modified accredited advanced State with regard to cattle and bison. Based on this classification, steers and spayed heifers, as well as sexually intact heifers moved to an approved feedlot, would not have to be tested to qualify for interstate movement from Texas. However, such animals would either have to be officially identified or identified by premises of origin identification to be moved interstate.

Movement From Accreditation Preparatory States and Zones

One commenter disagreed with our proposed requirement in § 77.14(c) that animals from an accredited herd to be moved interstate from an accreditation preparatory State or zone test negative for tuberculosis within 60 days prior to movement. The commenter stated that, because tuberculosis has never been found in an animal from an accredited herd, this test is unnecessary.

We are making no changes based on this comment. An accreditation preparatory State or zone is one in which tuberculosis can be prevalent in up to almost 0.5 percent of the total number of herds in the State or zone. This prevalence level presents a high enough risk that it is necessary to test animals from an accredited herd once before they are moved interstate from such a State or zone. As noted, to maintain accredited herd status, a herd of cattle or bison must be retested annually and a herd of captive cervids must be tested biennially. In an accredited preparatory State or zone, the length of time between herd testing could create an unacceptable risk that a herd will become affected with tuberculosis between the most recent testing and the date animals from the herd are moved interstate. With few

exceptions, all regulated animals not from an accredited herd in an accreditation preparatory State or zone must be tested with negative results at least twice before being moved interstate.

One commenter addressed our proposed requirement in § 77.14(d) that sexually intact animals to be moved interstate from an accreditation preparatory State or zone from other than an accredited herd originate in a herd that tests negative within 1 year prior to movement and be negative to two individual animal tuberculin tests. The commenter expressed concern that the requirement for the whole herd test would cause problems for cattle buyers who assemble steers and heifers from several different herds, place the animals in lots, and sell them. The commenter stated that compliance with the requirement for a whole herd test within 1 year prior to movement would require testing of all cattle in the State or zone.

We are making no changes based on this comment. As noted above, an accreditation preparatory State or zone constitutes a high risk area and safeguards are necessary to ensure that tuberculosis is not spread from such a State or zone. A whole herd test is the best means of diagnosing the tuberculosis status of animals from a high risk area.

Recommendation To Reduce Testing Requirements

One commenter stated that what the commenter termed "unnecessary testing" could be eliminated by establishing boundaries of "clean areas" and only requiring testing of cattle being moved into those areas.

We assume that, by "clean areas," the commenter is referring to accredited-free States and zones. We do not consider it advisable to require testing only for movement into accredited-free areas. The goal of the Tuberculosis Eradication Program is the elimination of tuberculosis in livestock in the United States, not just its confinement to areas where it already exists. By requiring negative testing for movement out of States and zones where tuberculosis exists, except where such movement poses negligible risk without testing, we will continue to make expeditious progress toward eradication of the disease in livestock in this country.

Testing of Calves

One commenter questioned what the testing requirements would be for very young calves intended for movement from a nonmodified accredited State or

area. The commenter recommended that once the Department has determined the minimum age at which tuberculosis tests are efficacious, it should be required that all livestock above that age be tested negative prior to movement and that all livestock below that age be from a herd that has tested negative for tuberculosis.

Although we are not certain which of the proposed tuberculosis risk categories the commenter means by referring to "nonmodified accredited," we can address the commenter's question regarding test requirements for very young calves. For the purposes of interstate movement, calves will be subject to the same test requirements as older cattle and bison, except that if a calf is moved interstate within 6 months after a whole herd test, it need not be individually tested, due to our confidence in the ability of a whole herd test to determine whether a herd is affected and the low risk that a calf moved within 6 months after that test would have been exposed to tuberculosis.

Several commenters stated that they saw no reason to require that baby calves be tested for tuberculosis because, according to the commenters, with proper identification and movement records, the calves could be traced back to their premises of origin should any problems occur.

We are making no changes based on the comments. We do not agree that young, sexually intact calves necessarily pose a negligible risk of transmitting tuberculosis to other livestock. Our goal is to prevent the transmission of the disease, not just to be able to trace back the movement of affected animals.

It should be noted that the requirement that cattle and bison of any age be tested for the purposes of interstate movement differs from the requirements in the UMR for achieving or retaining accredited herd status. In order to achieve or retain accredited herd status, the UMR requires the testing of all cattle and bison 24 months of age and older and any animals under 24 months of age that are not natural additions to the herd. Herds must be tested on an annual basis to retain accredited herd status.

One commenter asked whether calves would have to be tested prior to movement from a modified accredited State or zone if they were previously moved from an accredited free State or zone and were kept in the modified accredited State or zone for less than 60 days.

In the situation described by the commenter, the calves moved from a modified accredited State or zone would

be subject to the testing requirements for movement from that State or zone.

Movement Through Slaughter Auctions

Proposed § 77.12(a) provided that cattle and bison moved interstate from a modified accredited State or zone may be moved without testing if moved directly to slaughter at an approved slaughtering establishment. One commenter asked whether the "no-testing" provision also applied to animals sold through an auction market for slaughter within 7 days of the interstate movement.

If the animals were sold through an auction market, they would be subject to the testing requirements for movement from a modified accredited State or zone. There is no requirement for the testing of animals to be moved directly to slaughter because the very direct movement and subsequent slaughter of the animals minimizes the risk that they could transmit tuberculosis to any animals other than those also being moved directly to slaughter. Each additional stop and assembly of cattle and bison on the way to slaughter increases the risk of the spread of tuberculosis beyond those cattle and bison.

Certificates

Several commenters stated that those provisions of the proposed rule that required that animals be accompanied by a certificate when moved interstate would suppress the buying and selling of cattle from different zones or States.

We acknowledge that being required to secure a certificate from an APHIS representative, a State representative, or an accredited veterinarian could add some time to the process of purchasing livestock for movement to another State or zone. However, such certificates will be required only for movement from States or zones with a higher tuberculosis risk than an accredited-free State or zone. Under this rule, virtually all States and zones are classified as accredited-free for cattle and bison. By requiring measures such as certification for certain cattle and bison from States and zones other than accredited-free, the regulations will guard against the transmission of tuberculosis from those States and zones.

Request for Additional Certification

One commenter stated that we should require a certificate, such as a certificate of veterinary inspection, for movement from an accredited-free State, rather than allowing movement with no restrictions as proposed.

We are making no changes based on this comment. Unless the regulations

required official or premises of origin identification of animals moved from an accredited-free State or zone, we might not be able to match the information on a certificate with the animal for which the certificate was issued. We do not consider it necessary to require certification and identification for each animal moved from an accredited-free State or zone, in light of the minimal risk that a tuberculosis-infected animal would be moved from such a State or zone.

Definition of Captive Cervid

Several commenters addressed our proposed definitions of *captive cervid* and *livestock*. In § 77.20, we proposed to change the existing definition of *captive cervid* to include any cervid, either wild or maintained in captivity, that is moved interstate. In § 77.2, we proposed to revise the definition of *livestock* to include previously free-ranging cervids that are captured, identified, and moved interstate. One commenter recommended that the reference to free-ranging cervids be removed from the definition of *livestock*. The commenter expressed concern that including free-ranging cervids as livestock if they are captured for later release into the wild implies that State or Federal agriculture agencies will claim authority over the management and disposition of such cervids, which the commenter said would usurp the historical and legal authority of State wildlife management agencies. Other commenters recommended that the definition of *captive cervid* specify that free-ranging cervids involved in State-sponsored restoration attempts are "captive" only during the transport stage.

It was not our intent in our proposed rule to include free-ranging cervids under the definition of *captive cervids*, except for the period of time that the cervids are being held for movement. Therefore, we are providing in the definition of *captive cervids* in this rule that free-ranging cervids moved interstate shall be considered captive cervids during the period of time from capture until release into the wild.

Wild Cervids

One commenter requested clarification of what constitutes a "herd" with regard to wild cervids, and whether the wild cervid population in an entire State could be considered one herd for the purposes of herd status. The commenter also requested that we set forth the requirements a State would have to meet to obtain permission to move wild cervids interstate.

Except for free-ranging cervids held for interstate movement for relocation, as discussed above, our regulations do not apply to wild cervids. Therefore, we would not designate wild cervids as having a tuberculosis herd status under the regulations. A State would be allowed to move wild cervids interstate, as long as it complied with the tuberculosis testing and identification requirements for interstate movement.

State and Zone Classifications for Captive Cervids

A number of commenters addressed the provisions in our proposed rule that would allow captive cervids to be moved interstate according to either the applicable State or zone movement requirements or the applicable individual herd requirements (as set forth in the existing regulations), whichever are less restrictive. Under the existing regulations, individual herd status is based on the tuberculosis test results for that particular herd. One commenter recommended that States and zones not be given a tuberculosis risk classification for captive cervids until all captive cervid herds in the State or zone have been tested. The commenter expressed concern that surveillance for tuberculosis in captive cervids in the United States is not as advanced as it has been for cattle and bison. For the same reason, other commenters stated that it was premature to establish State and zone statuses for cervids. Some commenters stated that if a State were designated as accredited-free for captive cervids at present, individual herd owners would have no incentive to conduct surveillance to achieve individual accredited herd status, because captive cervids from all herds in the State could move interstate without restriction. Several commenters recommended that, at present, all States be designated as modified accredited at best. In contrast, one commenter was opposed to classifying all States as modified accredited. One commenter recommended that no State or zone be classified as any less of a risk than accreditation preparatory until it has demonstrated that surveillance requirements for a particular designation have been met. A number of commenters questioned the classifications with regard to tuberculosis in captive cervids that we proposed to give various States. Some commenters said they could not determine how we arrived at our proposed classifications.

We proposed to classify each of the States for captive cervids based on preliminary information made available to us by State officials. However, as we

noted in the proposed rule, in general, we had not received from States the information necessary to document that a sufficient number of herds of captive cervids in the States or zones had been tested to ensure that tuberculosis infection at a prevalence level of 2 percent or more will be detected with a confidence level of 95 percent, which is the level necessary to validly assess the tuberculosis prevalence in a State. We stated that we would need such information before we could make final each proposed designation. To give States an opportunity to provide such information, we proposed to allow a 90-day "grace period" following publication of a final rule for submission of the information.

Upon review of the comments received regarding this issue, we agree with commenters that, currently, the amount of cervid-specific tuberculosis surveillance data reported to APHIS by most States is still insufficient to validly assess the tuberculosis prevalence in captive cervid herds in those States. We do not consider it advisable to establish final State and zone classifications for captive cervids until we have had the opportunity to closely review any surveillance information submitted to us by States. Therefore, in this final rule, we are designating all States and zones as modified accredited for captive cervids. The interstate movement requirements for captive cervids under modified accredited State and zone status will be the same as those in the existing regulations for the interstate movement of captive cervids from unclassified herds, which is the classification of greatest risk for individual herds. However, as noted above, animals from herds of lesser risk than unclassified (*i.e.*, accredited, qualified, or monitored) may continue to be moved interstate according to the requirements for that herd status, despite the modified accredited status of the entire State.

We are providing in § 77.26(a) that each State has 1 year from the publication date of this final rule to supply us with the data necessary to demonstrate that the State complies with the UMR, incorporated by reference into the regulations, which includes the requirement that a sufficient number of herds of captive cervids in the State or zone be tested to ensure that tuberculosis infection at a prevalence level of 2 percent or more will be detected with a confidence level of 95 percent. Once a State has demonstrated compliance with the UMR, we will reassess its risk classification with regard to captive cervids and, if appropriate, propose to

change its status from modified accredited to another classification. However, if, within 1 year of the date of publication of this final rule, a State has not demonstrated that it complies with the UMR with regard to captive cervids, we will reclassify the State and any zones within the State as nonaccredited, which is the classification of highest risk for tuberculosis.

Movement Options for Captive Cervids

One commenter stated that allowing captive cervids to be moved interstate according to requirements for their individual herd status or the status of their State or zone, whichever are less restrictive, was confusing. Another commenter stated that the proposed requirements for the interstate movement of captive cervids from modified accredited and accreditation preparatory States and zones are more restrictive than the interstate movement requirements for cervids from qualified or monitored herds. The commenter said this does not seem compatible with the premise that animals should be permitted to move according to herd status or State status, whichever is less restrictive.

As we stated in our proposed rule, a State or zone classification system for captive cervids is expected to encourage States to aggressively conduct surveillance among all captive cervids in that State, whether or not any cervids from a particular herd are intended for interstate movement. However, if herd owners have invested the resources to conduct the monitoring and surveillance required to achieve a particular herd status, we consider it warranted and appropriate to allow such owners to continue to move their cervids under the existing regulations governing movement from such a herd, if those movement requirements are less restrictive than the requirements based on the risk classification of the State or zone in which the herd is located. We agree with the commenter, however, that there would be less potential for confusion in the regulations if requirements for movement of captive cervids were based solely on either State or zone status or herd status. Our intent is to move toward making movement solely dependent on State or zone status. However, in recognition of the time and expense taken by many herd owners to achieve a certain herd status, we intend to operate for several years in a transition period of allowing interstate movement of captive cervids according to the less restrictive of herd status or State or zone status.

One commenter questioned whether interstate movement of captive cervids

from qualified or monitored herds from a modified accredited State or zone would be governed by the movement requirements for the State or zone or for the movement requirements for a qualified or monitored herd.

As discussed, we will allow captive cervids to be moved interstate according to the requirements for their herd status or according to the requirements for their State or zone, whichever are less restrictive. (However, captive cervids from a nonaccredited State or zone will not have the option of moving under the provisions for herd status, as discussed above in this "Supplementary Information" under the heading "Movement from Nonaccredited States and Zones.") In the case of captive cervids from a qualified or monitored herd in a modified accredited State or zone, it would be less restrictive to move them according to their herd status, which we indicate in the introductory text to § 77.27.

One commenter said that it is unclear from the proposed rule how many deer herds need to be part of surveillance program. Several commenters stated that captive cervids in a herd that is not part of a surveillance program should not be allowed to be moved interstate. One commenter recommended that captive cervids from an unclassified herd in an accredited-free State not be allowed to move interstate without testing negative for tuberculosis once before movement.

Because a State or zone cannot achieve accredited-free status, or any status above nonaccredited, without demonstrating that a sufficient number of herds of captive cervids in the State or zone have been tested to ensure that tuberculosis infection at a prevalence level of 2 percent or more will be detected with a confidence level of 95 percent, we consider it appropriate to allow all captive cervids to move interstate from an accredited-free State or zone without restriction, even if the animals come from an unclassified herd. Allowing such movement is consistent with the practice we have been following for years of allowing all cattle and bison from an accredited-free State to move interstate without restriction.

One commenter questioned whether we were going to establish an "accredited-free (suspended)" status for captive cervids. We do not intend to establish such a classification. In our proposed rule, we proposed to eliminate the accredited-free (suspended) status for cattle and bison. Accredited-free (suspended) was the status given to States that had been previously designated accredited-free but in which tuberculosis had been diagnosed in

cattle or bison in the State. The accredited-free (suspended) status was intended to allow the State the time necessary to eradicate the disease before being designated modified accredited. We proposed to replace the accredited-free (suspended) status with specific requirements and deadlines for the elimination of a tuberculosis outbreak in an accredited-free State. In this final rule, in lieu of establishing an accredited-free (suspended) status for captive cervids, we are establishing requirements in § 77.22 for eliminating an outbreak in captive cervids that are comparable to those for cattle and bison in § 77.7.

One commenter said that the proposed rule seemed to provide that wild cervids in all tuberculosis-free States would be designated as modified accredited. The commenter said that, if that interpretation were correct, requiring free-ranging cervids to be held 90 days for consecutive tests could result in unacceptable mortality rates. It is not clear to us why the commenter interpreted the proposed rule as he did. If a State or zone is classified as accredited free for captive cervids, that classification would apply to all captive cervids in the State or zone, including free-ranging cervids that are temporarily held for interstate transport.

Accredited Herd Test for Captive Cervids

We proposed in §§ 77.25 and 77.27 that captive cervids from an accredited herd may be moved interstate from modified accredited advanced States and zones and modified accredited States and zones if they are accompanied by a certificate stating that the accredited herd completed the tuberculosis testing necessary for accredited status with negative results within 1 year prior to the date of movement. The proposed requirements in §§ 77.29 and 77.31 for interstate movement of captive cervids from accredited herds in accreditation preparatory States and zones and nonaccredited States and zones also required such herd testing within 1 year prior to interstate movement.

Several commenters recommended that we remove the requirement that the herd test for accredited status be completed within 1 year prior to interstate movement of the captive cervids because, under the existing regulations, accredited herd status is valid for 24 months from the date of the testing for accredited herd status. We agree with the commenters that our proposed requirement was inconsistent with the existing regulations and are requiring in §§ 77.25(b), 77.27(b), and

77.29(b) of this final rule that the requirements for accredited herd status must be completed within 24 months prior to the interstate movement of the captive cervids.

Movement of Captive Cervids From Qualified and Monitored Herds

One commenter stated that, for the purposes of interstate movement of captive cervids from modified accredited States and zones, an animal that originates from a "qualified herd" should be considered as one that has obtained an individual animal test for movement. The commenter stated that the requirements in the existing regulations for obtaining qualified herd status are more effective than requiring a negative individual test of an animal to be moved.

As discussed above under the heading "Whole Herd Test," in this final rule we are requiring that captive cervids that are to be moved from a modified accredited State or zone, and that are sexually intact animals not from an accredited herd, must test negative to one whole herd test and also to one individual test. Because of the level of risk of tuberculosis in a modified accredited State or zone, we consider it necessary to require such conditions, even for captive cervids originating from a qualified herd. However, due to the lower level of tuberculosis risk in a modified accredited advanced State or zone, we agree that a captive cervid herd that has achieved qualified or monitored status has already met surveillance and herd history standards equivalent to the biosecurity afforded by an individual test. Therefore, we are providing in § 77.25(b) that captive cervids to be moved from a modified accredited advanced State or zone that are from an accredited herd, qualified herd, or monitored herd may be moved interstate if they are accompanied by a certificate stating that the herd has completed the requirements for accredited herd, qualified herd, or monitored herd status within 24 months prior to the date of movement.

Cervids Moved for Exhibition

Under the existing regulations, to be eligible for qualified herd status, all captive cervids in the herd eligible for testing must have tested negative to an official tuberculosis test. Additionally, under the existing regulations, a captive cervid moved interstate from a qualified herd must be accompanied by a certificate that states that the cervid has tested negative to an official tuberculosis test conducted within 90 days prior to the date of movement. In our proposed rule, we provided that

captive cervids from a qualified herd could be moved interstate without testing if moved for the purpose of exhibition, provided they are returned to the premises of origin no more than 90 days after leaving the premises, have no contact with other livestock during movement and exhibition, and are accompanied by a certificate that includes a statement that the captive cervid is from a qualified herd. One commenter opposed this provision for captive cervids moved to exhibition. The commenter stated that moving cervids for exhibition purposes without requiring testing leaves open the possibility of transmission of tuberculosis at exhibition and dissemination of the disease upon return to the farm of origin.

We are making no changes based on this comment. We consider the conditions we are requiring for such movement to be sufficient to ensure that a captive cervid from a qualified herd does not pose a risk of transmitting tuberculosis to other livestock or being infected by other livestock. The definition of *livestock* in § 77.2 includes animals held for exhibition. Therefore, the stipulation that captive cervids moved for exhibition not come into contact with other livestock while moved or held for such exhibition will preclude any exposure of the captive cervids to affected animals.

Accredited Captive Cervid Herds

In some cases in our proposed rule, the interstate movement requirements for cattle and bison and for captive cervids were dependent on whether the animals were moved from an accredited herd. In proposed § 77.5, regarding cattle and bison, we defined *accredited herd* as follows: "To establish or maintain accredited herd status, the herd owner must comply with all of the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited herds. All cattle and bison in a herd must be free from tuberculosis."

Among the requirements for accredited herd status for cattle and bison as set forth in the UMR is the requirement that testing shall include all cattle and bison 24 months of age and older. One commenter recommended that the definition of an accredited herd of cattle or bison provide instead that testing shall include all cattle and bison 12 months of age and older. Although we are making no changes based on the comment, we consider it an issue worthy of further review and will consider it when undertaking future revisions of the UMR.

Surveillance Necessary for Accredited-Free Status

In our proposed definition of *accredited-free State or zone* in §§ 77.5 and 77.20, among the conditions for achieving such status we included the provision that there have been no findings of tuberculosis in the animals in question for the previous 5 years, except that the waiting period would be less than 5 years if certain other conditions were met. One of the exceptions we proposed was that the waiting period would be 3 years in States or zones that have conducted surveillance that demonstrates that other livestock herds and wildlife are not at risk of being infected with tuberculosis, as determined by the Administrator based on a risk assessment conducted by APHIS.

Several commenters stated that the methods and criteria of such an assessment should be included in the regulations. One of the commenters stated that, as worded, the proposed provision did not make clear what surveillance methodology would be required. The commenter expressed concern that surveillance requirements could be unrealistic, prohibitively expensive, and not supported by independent, objective risk assessment. The commenter recommended that we allow analysis of surveillance data by experts in risk assessment other than APHIS.

In determining surveillance requirements, it is necessary to assess the situation in each given State or zone. For instance, in some States and zones, infected wildlife may pose a significant risk to livestock, while in other States, wildlife may be a negligible factor. In some States and zones, beef cattle may be spread over wide areas, whereas in other States and zones they may be more concentrated. Some States have significant numbers of large, densely populated dairy herds; others have few very large herds. Therefore, it would not be in the best interests of each State or zone to establish uniform surveillance criteria for all States and zones. We do not consider it advisable to include in the regulations the methodology that will be used in each case, because risk assessment methodology is subject to ongoing refinement. The methodology that APHIS will use to conduct risk assessments will be open to inspection by the public, and we will work closely with each State in determining the surveillance necessary to achieve accredited-free status 3 years after the last diagnosis of tuberculosis in the State or its zones.

One commenter said that the option of achieving accredited-free status after 3 years based on the surveillance described above should be eliminated. The commenter recommended instead that the surveillance described above be added as a condition for achieving accredited-free status after a 5-year wait when affected herds have not been depopulated. We are making no changes based on the comment. The option of achieving accredited-free status after 3 years was included as an incentive for States to conduct surveillance over and above the baseline surveillance required by the UMR, just as the option of achieving accredited-free status 3 years after depopulation of all affected herds is included as an incentive to States to depopulate affected herds. In those States in which depopulation of affected herds is not a viable option, due to, for instance, insufficient State funding for indemnity payments, we consider it necessary to the continued progress of the tuberculosis eradication program to encourage the States to take measures over and above the minimum standards set forth in the UMR.

Animals at Feedlots

The definitions of *accredited-free State or zone* in §§ 77.5 and 77.20 of the proposed rule included, as one of the methods of achieving that status, that a State or zone have had no findings of tuberculosis in any cattle or bison for the previous 5 years. One commenter stated that such a determination of no finding of tuberculosis should not include cattle at feedlots.

Historically, we have determined a State's tuberculosis status by the incidence, or lack thereof, of the disease in herds of cattle and bison. In enforcing the tuberculosis regulations, we have historically not considered the assembly of cattle at feedlots to be a herd. Rather, we have looked at the disease status of a herd prior to the movement of animals from that herd to a feedlot. Because the animals assembled at a feedlot generally consist of animals from a number of different herds assembled for a limited period of time, we have not found it useful for the purposes of the tuberculosis eradication program to consider such an assembly of animals a herd. Therefore, we are amending the definition of *herd* in § 77.5 regarding cattle and bison to specify that animals assembled at a feedlot are not considered a herd. Additionally, we are adding a definition of *feedlot* to mean a facility for congregating finished fed cattle prior to their being shipped to slaughter. We are adding a definition of *finished fed cattle* to mean cattle fattened on a ration of feed concentrates

to reach a slaughter condition equivalent to that which would be attained on full feed with a high concentrate grain ration for 90 days.

We believe that the commenter's concern regarding how the disease status of animals at a feedlot would affect the status of a State or zone may have been caused by certain wording in our proposed rule that might be misleading. In §§ 77.5 and 77.20 of the proposed rule, in the definitions of *accredited-free State or zone* for cattle and bison and for captive cervids, respectively, we included as one of the conditions for being considered an accredited-free State or zone that the State or zone, with certain exceptions, have had no findings of tuberculosis in the State or zone for the previous 5 years. However, consistent with the other provisions of the proposed rule and with our historical practice in enforcing the regulations, our intent regarding the 5-year "waiting period" was that a State or zone have no findings of tuberculosis in a *herd* during that time. We are wording this final rule to make clear our intent that the 5-year waiting period will apply to freedom from tuberculosis in herds other than at feedlots.

Deadline for Epidemiologic Investigation

In § 77.7(c) of our proposed rule, we provided, with regard to cattle and bison, that if an affected herd is detected in a State or zone classified as accredited free, and the herd is depopulated and an epidemiologic investigation is completed within 90 days of the detection of the affected herd with no evidence of tuberculosis, the State or zone may retain its accredited-free status. We included a similar provision for captive cervids in § 77.22(c), except that the proposed time to complete the investigation was 120 days, due to the longer waiting period necessary between tests of cervids than those of cattle and bison.

Several commenters said that 90 days is not enough time for an accredited-free State or zone to complete an epidemiologic investigation in the event of a tuberculosis outbreak in cattle or bison. One commenter recommended that the maximum time allowed be 120 days, as we proposed for captive cervids. Another commenter recommended that the maximum time allowed be 180 days for cattle and bison, as well as for captive cervids.

We are making no changes based on the comments. We consider 90 days a sufficient amount of time to complete an epidemiologic investigation in cattle and bison and, because of the

emergency nature of an outbreak in an accredited-free State or zone, do not consider it advisable to allow any more time than is necessary to complete an investigation. The amount of time allowed to complete an investigation regarding captive cervids will remain 120 days as proposed for reasons explained above.

Tuberculosis in an Accredited-Free State or Zone

Several commenters, addressing the scenario of an outbreak occurring in an accredited-free State or zone, stated that the proposed rule did not require testing for tuberculosis in such a State or zone during the time between discovery of the affected herd and completion of an epidemiologic investigation, even though, according to the commenters, the risk of tuberculosis being spread from that State or zone must be greater than that from other accredited-free States or zones.

We do not agree that it is necessary to require testing of animals from an accredited-free State or zone while an epidemiologic investigation is being conducted following an outbreak of tuberculosis in the State or zone. To achieve accredited-free status, a State or zone must have no findings of tuberculosis in herds of regulated animals for 2 to 5 years. Additionally, a sufficient number of herds of regulated animals must be tested in the State or zone to ensure that tuberculosis infection at a prevalence level of 2 percent or more is detected with a confidence level of 95 percent.

With these safeguards in place, it is likely that any herd diagnosed with tuberculosis in an accredited-free State or zone represents an isolated incidence of the disease. Additionally, in order for a State or zone to retain its accredited-free status, a cattle or bison herd in which tuberculosis is detected must be depopulated and an epidemiologic investigation must be completed within 90 days of the detection of the affected herd (120 days for captive cervids). It is, therefore, unlikely that the disease will have an opportunity to spread beyond the affected herd. We do not consider it warranted to require testing of other herds within the State or zone while the epidemiologic investigation is being conducted.

One commenter stated that, because a tuberculosis-affected herd in an accredited-free State or zone must be depopulated for the State or zone to retain its accredited-free status, APHIS should establish a fund for the payment of indemnity for such depopulations.

We are aware that payment of compensation is an important incentive

in encouraging a herd owner to agree to depopulation of an affected herd and are seeking funds to supplement the funds already available to us to provide such compensation.

Number of Zones Per State

We proposed in § 77.4 to remove the provision in § 77.8 of the current regulations that limits the number of zones in a State to no more than two. One commenter opposed allowing an unlimited number of zones per State, questioning whether the necessary restrictions on movement between zones could be maintained over time. The commenter recommended that the number of zones per State be capped at three, with provision for the Administrator to authorize additional zones up to five. Other commenters stated that the maximum number of zones per State should be kept at two. Several of these commenters expressed concern that allowing more than two zones per State might encourage certain areas of the State not to pursue eradication aggressively.

We are making no changes based on these comments. According to the regulations, APHIS will recognize multiple zones within a State only if the State demonstrates that it meets the requirements specified in the regulations regarding its tuberculosis eradication program, veterinary infrastructure, and epidemiologic surveillance for tuberculosis in the State. Additionally, 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. Once APHIS recognizes multiple zones within a State, such recognition is subject to annual review by the Administrator, who will determine whether the State continues to meet the conditions for zone recognition. Based on these criteria for zone recognition, we do not consider it necessary to set a predetermined maximum on the number of zones per State.

With regard to the commenters' concern that establishing more than two zones in a State might encourage certain areas within that State not to pursue eradication aggressively, our intent in allowing more than two zones is to achieve just the opposite effect. If the number of zones within a State is limited to two, and one or both of the zones contain within themselves varying levels of risk for tuberculosis, the impossibility of creating additional zones could act as a disincentive for the zones to restrict movement within the existing zones to otherwise contain the disease and move toward eradication. In

those cases where it appears advisable to explicitly encourage progress toward eradication in zones, APHIS can do so in the memorandum of understanding with the State, making such progress, for example, a condition for retaining zone recognition in the State.

Retention of Zone Recognition

In proposed § 77.4, regarding application for and retention of zone status for tuberculosis within a State, we provided that retention of APHIS recognition of a zone is subject to annual review by the Administrator, and that, to retain recognition of a zone, a State must retain for 2 years all applicable movement certificates and continue to comply with the conditions that had to be met to achieve initial recognition of the zone. These conditions include requirements regarding the State's legal and financial resources to implement and enforce a tuberculosis eradication program, the State's infrastructure for notifying State and Federal animal health authorities of tuberculosis in the State, surveillance for tuberculosis and review of testing within the intended zones, and a memorandum of understanding between the State and APHIS.

One commenter recommended that the requirements for retention of zone recognition also include annual review by APHIS of the tuberculosis management plan required in the proposed rule to achieve State and zone risk classification (except for "nonaccredited") in those cases where tuberculosis is diagnosed in an animal not specifically regulated under the tuberculosis regulations and where a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone.

We agree with the commenter that it would be advisable to make clear that retention of APHIS recognition of a zone is dependent on whether the State in question meets the conditions necessary to maintain or improve the status of each zone in the State, and we are adding such a requirement to § 77.4(b). If a State fails on an extended basis to meet the conditions necessary to maintain or improve the status of its zones, we will conclude that it is not meeting the conditions for its original zone recognition (*i.e.*, that it implement and enforce a tuberculosis eradication program and have in place adequate animal health laws, regulations, and infrastructure).

Retention of Certificates

The provisions in proposed § 77.4(b) for retention of recognition of zones

within a State require that, to continue such recognition, a State must retain for 2 years all certificates required by the regulations for the movement of cattle, bison, and captive cervids. One commenter stated that a 2-year retention requirement is inadequate for movement records for tuberculosis and recommended that the retention time be at least 5 years. We do not agree that certificates should be required to be retained for more than 2 years. Requiring retention of movement records for 2 years enables us to trace back the movement of animals affected by tuberculosis for a period of time when traceback is feasible enough to justify retention of the records. The likelihood of tracing an animal back to its premises of origin declines with the amount of time that has passed since its original movement. This is often due to intrastate movements that do not require records retention under the regulations. We have found through our experience enforcing the regulations that the likelihood of tracing animals back has declined after 2 years to the extent that requiring retention of movement records is not justified. However, in this final rule, we are clarifying the provision in § 77.4(b) regarding retention of records to state that the certificates must be retained for at least 2 years.

Tuberculosis Management Plan and Wildlife

Several commenters expressed concern regarding the proposed provision that if tuberculosis is diagnosed in a State or zone in an animal not specifically included in the regulations, and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, then the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the APHIS Administrator (Administrator), within 6 months of the diagnosis. The commenters stated that the requirement that the plan be approved jointly by the State animal health official and the Administrator would usurp the authority of State wildlife management agencies. Several commenters recommended that if tuberculosis is diagnosed in wildlife, State wildlife agencies assist in and be the lead agencies for implementation of a disease management plan. One commenter questioned what the current situation was regarding surveillance in wildlife and stated that APHIS needs to seek authority to deal with tuberculosis in wildlife.

APHIS does have authority to address tuberculosis in wildlife to the extent it poses a risk to the health of livestock. Therefore, we consider it necessary for APHIS, along with the State animal health official, to determine whether a disease management plan involving tuberculosis in wildlife will be adequate to protect the livestock in a State or zone. However, the regulations require joint approval of a disease management plan by APHIS and the State at a minimum. We recognize the integral role of State wildlife agencies in developing and implementing a disease management plan that involves wildlife, and we expect to work closely with such agencies should the need for a plan arise.

In the proposed provisions regarding the maintenance of accredited-free, modified accredited advanced, modified accredited, and accreditation preparatory classifications, there is a requirement that if tuberculosis is diagnosed in an animal not specifically regulated under part 77, and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. According to the proposed provisions, the management plan must include provisions for, among other things, immediate investigation of tuberculosis in livestock, wildlife, and animals held for exhibition. One commenter asked whether it should be assumed that "wildlife, and animals held for exhibition" refers to wildlife only when they are held for exhibition and not to free-ranging wildlife.

It was our intent regarding the language cited by the commenter that, in the case of a tuberculosis risk to livestock, all wildlife would be subject to investigation, not just wildlife held for exhibition, and we are making a change to the text of the regulations to clarify this. However, as stated, wildlife would be subject to investigation only when wildlife in the State or zone poses a tuberculosis risk to livestock. If an outbreak among wildlife is determined to present no risk to livestock, the investigation described above would not be required.

Preemption

In accordance with Executive Order 12988, we included a statement in our proposed rule giving notice that any State and local laws and regulations in conflict with the proposed provisions would be preempted. A number of

commenters stated that including such a statement in the rulemaking was harmful to State-Federal cooperative efforts. Other commenters expressed concern that the statement meant that a State could not require any conditions for movement of animals into the State over and above the Federal requirements.

Under Executive Order 12988, a Federal agency that formulates proposed legislation and regulations is required, among other things, to specify in clear language the preemptive effect it intends to be given to its legislation or regulations. The executive order does not specify what that preemptive effect shall be. Historically, domestic animal health regulations of a State have not been challenged when they require conditions more stringent than those included in the APHIS regulations. However, State regulations that conflict with or subvert Federal regulations concerning the interstate movement of animals and products that are promulgated for the purpose of the control of diseases of livestock and poultry will probably be held unconstitutional if challenged.

Research Regarding Tuberculosis

One commenter stated that the existing scientific data regarding tuberculosis in the animals addressed by the regulations is insufficient to allow for decisions based on risk analysis or similar statistical methods.

We do not agree that insufficient scientific data exist regarding tuberculosis in animals addressed by the regulations. The USDA's Agricultural Research Service has been conducting research on tuberculosis in animals for a number of years. Additionally, research has been done outside the United States regarding cross-species transmission of tuberculosis. Information regarding these studies can be obtained by contacting the person listed in this final rule under **FOR FURTHER INFORMATION CONTACT**.

One commenter stated that the case for transmission of tuberculosis from bison and captive cervids under natural production conditions is very weak and lacks the conclusive scientific data that should be required for the proposed rule.

We do not agree that scientific evidence regarding cross-transmission of tuberculosis is lacking. Multiple epidemiologic investigations of tuberculosis outbreaks have demonstrated the movement of the

tuberculosis disease agent from one species to another.¹

Implementation of Regulations

One commenter requested that States be allowed time to phase in the regulatory changes and noted that State rule changes in the commenter's State become effective no sooner than 74 days after the rule is filed.

We are aware that it takes time for a State to revise its own regulations when such a change is made necessary by one of our regulatory changes. With regard to changes concerning cattle and bison in this final rule, we are not aware of any State regulatory changes that will be necessary. With regard to changes concerning captive cervids in this final rule, we are providing each State with 1 year to submit data to us demonstrating the State or zone status for which the State will qualify. In the meantime, we are classifying each State as modified accredited with regard to captive cervids, which means that no owner of captive cervids will need to meet conditions any more stringent than currently in place for interstate movement of the animals. With regard to any future rulemaking that would require a State to change its regulations, we will not finalize a regulation with regard to a State until the State has implemented its regulations.

M. Bovis

One commenter stated that it was not clear that the proposed rule would apply only to *M. bovis*. The commenter said there are many other types and strains of mycobacteria that are usually referred to as soil borne or unclassified mycobacteria.

We disagree with the commenter that it is not clear which disease agent we are talking about in the proposed regulations. Section 77.2, "Definitions," defines *tuberculosis* as "the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*."

Role of States and Other Cooperators

One commenter stated that the proposed rule did not include an explanation of why the role of States and other cooperators is reduced in the proposed rule. We do not agree that the

¹ See, for example, Crews K.B., Collins D.M., deLisle G.W., MacKenzie R.W., Walker R., Yates G.F., "Epidemiology and Transmission of Bovine Tuberculosis. A study of bovine tuberculosis in domestic animals and wildlife in the MacKenzie Basin and surrounding areas using DNA fingerprinting," *New Zealand Veterinary Journal* 43, 1995, pp. 266-271, and Dolan, L.A., "An Analysis of Epidemiology Reports that Attributed the Cause of Herd Breakdowns to Wildlife," *Tuberculosis Investigation Unit, University College Dublin, Selected Papers* 1992, pp. 33-36.

role of States and other cooperators will be reduced by this final rule. Those provisions in the existing regulations for which joint State-Federal action is required were retained in the proposed rule and in this final rule. Additionally, both the proposed rule and final rule provide that to achieve any risk classification higher than nonaccredited, a State or zone must comply with the provisions of the UMR.

Limiting Interstate Movement of Specific Species or Type

A number of commenters recommended that the regulations state that the Administrator has authority to limit interstate movement of species, or classes of animals within species, that pose a high risk of being a reservoir of tuberculosis.

It is not necessary for us to include in the regulations that the Administrator has the authority described by the commenters. The Administrator has such authority with regard to any disease. If it occurs that a particular species or type of animal presents an unacceptable risk of harboring tuberculosis and transmitting it to livestock, we will take action to restrict the interstate movement of that species or type of animal.

Approved Feedlots

One commenter stated that if APHIS is going to allow sexually intact heifers to be moved interstate to an approved feedlot from a modified accredited advanced State or zone, APHIS must be prepared to perform all the functions required to carry out this provision. The commenter stated that requiring States to oversee this would place an undue burden on State resources.

Although the regulations in this rule allow for the movement of sexually intact heifers from a modified accredited advanced State or zone to an approved feedlot, they do not require that a State agree to approve feedlots. In § 77.5 of this rule, an *approved feedlot* is defined as “a confined area approved jointly by the State animal health official and the Administrator for feeding cattle and bison for slaughter, with no provisions for pasturing or grazing.” Any intrastate movement to or from an approved feedlot would come under State authority. A State that determines it does not have the resources to handle movement to or from an approved feedlot has the option of not approving such feedlots.

One commenter stated that cattle from accreditation preparatory States and zones, including those from accredited herds, should be allowed to be moved only to approved feedlots.

We do not consider it necessary to restrict the movement of cattle from accredited herds in an accreditation preparatory State to approved feedlots. The risk of tuberculosis transmission by animals from an accreditation preparatory State or zone, although greater than that for animals from an accredited-free, modified accredited advanced, or modified accredited State or zone, is, according to the definition of *accreditation preparatory State or zone*, limited. To qualify for accreditation preparatory, a State or zone must comply with the UMR and have a tuberculosis prevalence of less than 0.5 percent. Because animals in an accredited herd undergo constant monitoring for tuberculosis, we consider whatever risk is present from animals from an accredited herd in an accreditation preparatory State or zone to be mitigated to a negligible level by the testing required for the interstate movement of cattle and bison.

One commenter stated that no interstate movement of captive cervids should be allowed from States and zones classified as accreditation preparatory or less. We are making no changes regarding movement from accreditation preparatory States and zones based on this comment, for the same reasons as those noted in the preceding paragraph.

Postmovement Testing

One commenter recommended that, in addition to two negative premovement tests, officially identified, sexually intact cattle from a modified accredited State or zone that are not being moved to an approved feedlot should be required to have a postmovement test. The commenter stated that this is necessary because of the possibility that premovement testing of cattle from modified accredited States and zones may be questionable. The same commenter stated that testing of all cattle from accreditation preparatory States is suspect, and that a postentry test should be required for all cattle from these States and zones, including those from an accredited herd.

We are making no changes based on this comment. We consider the conditions we are setting forth in this rule for interstate movement to be adequate to mitigate the disease risk that might otherwise exist from interstate movement of animals from States and zones of different risk classifications.

Direct Movement

Proposed § 77.2 defined *moved directly* for cattle, bison, and captive cervids to mean “moved without stopping or unloading at livestock

assembly points of any type. Livestock being moved directly may be unloaded from the means of conveyance while en route only if the animals are isolated so that they cannot mingle with any livestock.” One commenter stated that the definition of *moved directly* should include a statement that the State animal health official must give permission to unload cattle or bison that are being moved directly. When we included in the definition of *moved directly* the provision for livestock to be unloaded en route provided they are isolated from other livestock, we intended that such unloading en route would be carried out only in very limited circumstances, such as in the case of a mechanical breakdown or the need to provide food and water to the animals. In order to ensure that such unloading is carried out only in limited circumstances and when necessary, and to ensure that the livestock unloaded en route are kept isolated from other livestock, we are including in the definition of *moved directly* in § 77.2, as recommended by the commenter, that livestock being moved directly may be unloaded from the means of conveyance while en route only with the permission of the State animal health official, and only if the animals are isolated so that they cannot mingle with any livestock other than those with which they are being shipped.

Concern Regarding States' Inability To Take Action

Several commenters stated that the Department has not adequately addressed the issue of the sovereign immunity of Native American reservations in the West. The commenters asked how a State's classification would be affected if tuberculosis were discovered but not dealt with on a reservation.

The situation described by the commenters has not arisen to date. If tuberculosis were diagnosed on a reservation, APHIS would work closely with the reservation to eliminate the source of the infection. The State or zone in which the reservation is located could establish a quarantine to prohibit or restrict movement of livestock from the reservation. If we determined that a State or zone had taken all measures possible to address an outbreak on a reservation, it is unlikely we would immediately take action to downgrade the status of the State or zone.

One commenter stated that a situation could arise where tuberculosis is diagnosed in animals not specifically covered by the regulations and the State or zone will not be able to implement a tuberculosis management plan that

includes investigation of tuberculosis in wildlife because the wildlife are under Federal jurisdiction, such as in a national park. The commenter expressed concern that, in such a situation, a State or zone's classification could be downgraded.

If a situation should arise where a State is making every possible effort to comply with the regulations but cannot fully comply because of the involvement of another Federal agency, we would take that into account when determining whether a State's or zone's risk classification should be downgraded.

Definitions

In our proposed rule, we used the term "designated tuberculosis epidemiologist" and defined that term in § 77.2 to mean a State or Federal epidemiologist designated by the Administrator to make decisions concerning the use and interpretation of diagnostic tests for tuberculosis and the management of tuberculosis-affected herds. One commenter stated that the duties of a designated tuberculosis epidemiologist must be much broader than as defined and should include, but not be limited to, tracing movements of animals into and out of an affected herd, identifying potentially exposed herds, identifying areas for area testing, and identifying potential nonlivestock sources of disease.

Although the definition of *designated tuberculosis epidemiologist* we used in our proposed rule was not incorrect, we agree that it does not encompass all of the duties of a designated tuberculosis epidemiologist. To make clear the scope of the designated tuberculosis epidemiologist's responsibilities, we are revising the definition of that term to state, in addition to what is included in the existing definition, that a designated tuberculosis epidemiologist has the responsibility to determine the scope of epidemiologic investigations, determine the status of animals and herds, assist in the development of individual herd plans, and coordinate disease surveillance and eradication programs within the geographic area of his or her responsibility.

In our proposed rule, we used the term "epidemiologic investigation" and defined that term in § 77.2 to mean an investigation that is conducted by a State in conjunction with APHIS representatives, in which an official test for tuberculosis is conducted on all livestock in any tuberculosis-affected herd in a State or zone, as well as on all livestock in any herd into which livestock from the affected herd have been moved. One commenter stated

that, according to the definition as written, herds across a fence or road from an affected herd would not be included in the epidemiologic investigation unless animals from the affected herd were moved into the herd across the fence or road. The commenter recommended that the definition of *epidemiologic investigation* be expanded to also include investigation of all potential source herds and investigation of all herds and animals that have had a likelihood of being exposed to the affected herd.

We agree that an effective epidemiologic investigation should include investigation of the herds and animals described by the commenter and are revising the definition of *epidemiologic investigation* in § 77.2 accordingly.

As discussed above under the heading "Identification Requirements," we are adding to § 77.2 a definition of *premises of origin identification*. In that definition, we use the term "area veterinarian in charge." We are defining *area veterinarian in charge* in § 77.2 to mean "the veterinary official of APHIS who is assigned by the Administrator to supervise and perform the official animal health work of APHIS in the State concerned."

In this final rule, we use the term "approved feedlot," which we define in § 77.5 as a confined area approved jointly by the State animal health official and the Administrator for feeding cattle and bison for slaughter, with no provisions for pasturing and grazing. In the existing regulations regarding exposed cattle (§ 77.17(b) of this rule), there is a reference to a "quarantined feedlot" as used in § 50.16. A quarantined feedlot as referred to in § 50.16, and as defined in § 50.1, differs from an approved feedlot as defined in § 77.5 of this rule in that a quarantined feedlot is under the direct supervision and control of a State livestock official, with restrictions on the movement of all livestock entering or leaving the feedlot. As defined in § 50.1, a quarantined feedlot is "a confined area under the direct supervision and control of a State livestock official who shall establish procedures for the accounting of all livestock entering or leaving the area. The quarantined feedlot shall be maintained for finish feeding of livestock in drylot with no provision for pasturing and grazing. All livestock leaving such feedlot must only move directly to slaughter in accordance with established procedures for handling quarantined livestock." To make clear the distinction between the two types of feedlots, we are adding to § 77.5 the

definition of *quarantined feedlot* set forth above.

Additionally, we are clarifying in the definition of *State* in § 77.2 that the word "territories" refers to U.S. territories.

Comments Outside the Scope of the Proposed Rule

In our proposed rule, we reformatted all of 9 CFR part 77, even though we were proposing changes to only a selected number of provisions in the regulations. In order to make it easier to follow our proposed formatting changes, we set out all of part 77 in the proposal, including those provisions of the existing regulations to which we were proposing no amendments, except to change section number designations. We stated in our proposed rule that we were not soliciting comments on the unchanged provisions, and we listed those sections or parts of sections on which we were not soliciting comments.

Several commenters, however, submitted comments that addressed certain of the provisions to which we were proposing no changes. Virtually all of the issues raised by these commenters concerned standards in the current regulations for testing of captive cervids. Although we are making no changes at this time based on these comments, we will consider each one and determine whether future changes based on the recommendations appear warranted.

Change to Authority Citation

We are making a change to the authority citation for part 77 to reflect a reformatting of the provisions in 7 CFR 371 regarding the delegation of authority to Veterinary Services, APHIS. Consistent with this reformatting, we are changing the reference to 7 CFR 371.2(d) to read 7 CFR 371.4.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting as a final rule the interim rules of November 1, 1999, and June 28, 2000, and the proposed rule of March 7, 2000, 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.

Bovine tuberculosis is a communicable disease of cattle, bison, cervids and other species, including humans, and results in losses in meat and milk production and sterility among infected animals. The Cooperative State/

Federal Tuberculosis Eradication program has virtually eliminated bovine tuberculosis from the Nation's livestock population. However, changes to the tuberculosis regulations are needed to further the efforts toward complete eradication.

Currently, the tuberculosis regulations define State risk classification levels for cattle and bison. However, until the effective date of this rule, the classification levels provide only for three broadly drawn classifications of risk, and two of the classifications carry no restrictions on the interstate movement of cattle and bison not known to be infected with tuberculosis. The current regulations do not provide classification levels for captive cervids. This rule will increase the number of risk classifications and establish risk classifications for States and zones with regard to captive cervids. The classification of a State or zone with regard to cattle and bison will not necessarily be the same as its classification with regard to captive cervids. Under this rule, the five possible risk classifications will be accredited-free, modified accredited advanced, modified accredited, accreditation preparatory, and nonaccredited.

Cattle and Bison

In 1999, the total number of cattle in the United States was approximately 99.115 million, valued at approximately \$58.833 billion. There were 1,095,960 U.S. operations with cattle. Over 99.1 percent of these operations were small businesses with a gross cash value of less than \$500,000. There were about 112,700 bison held as livestock in the United States, valued at about \$169 million, on 1,150 premises.

The U.S. cattle industry plays a very significant role in international trade. In 1999, the total earnings from exports of live cattle, beef, and veal were approximately \$2.8 billion. The U.S. competitiveness in international markets depends to a great degree upon its reputation for producing high-quality animals, a reputation that would be enhanced if bovine tuberculosis were eradicated in this country. The product, as well as purchasers' perceptions of quality, contributes to continued world market acceptance. Thus, efforts to maintain an effective tuberculosis program, to clarify the regulations, and to secure the health of the cattle industry will continue to serve the best economic interests of the Nation.

Currently, with regard to tuberculosis State or zone classifications for cattle and bison, there are 47 accredited-free States, plus Puerto Rico and the U.S.

Virgin Islands. As a result of this rule, one modified accredited State (New Mexico) will become accredited-free, bringing the total to 48 States that are accredited free. A currently modified accredited State (Texas) will be classified as modified accredited advanced. Michigan, which we classified as nonmodified accredited in our June 22, 2000, interim rule, will be classified as modified accredited in this final rule. According to the testing requirements in this final rule, only Texas will be likely to be affected by this rule. However, Michigan was affected by the June 22, 2000, interim rule, and we discuss that effect as part of this analysis.

The primary difference among the restrictions on interstate movement from the different proposed classifications is how many, if any, tuberculin tests with negative results the animal must have to be moved interstate. The same test is used for cattle and bison (and cervids, as discussed below). For movement from a modified accredited advanced State (Texas), sexually intact cattle and bison not from an accredited herd will be required to have one negative test before they can be moved interstate and will be required to be officially identified. For movement from a modified accredited State (Michigan), sexually intact animals not from an accredited herd will be required to have one negative whole herd test and one negative individual test and be officially identified, while sexually intact heifers moved to an approved feedlot, steers, and spayed heifers will need just one test and will be required to be either officially identified or identified by premises of origin identification.

In Texas, as of January 1999, there were about 153,000 cattle herds with 14.9 million cattle, valued at \$7.1 billion. (In addition, there were, in Texas, 40 operations with bison, with a total of 1,370 animals.) Of the cattle, close to 77 percent (11,439,800) would require testing for tuberculosis under this rule if they were moved interstate. This number includes sexually intact cattle, other than sexually intact heifers moved to approved feedlots (which may move interstate without testing). However, of the total number of cattle that would require testing if moved interstate, only about 10 percent are likely to be moved interstate. Thus, the total number of cattle from Texas likely to require testing annually is 1,143,980.

In Michigan, as of January 1999, there were about 15,500 cattle herds with 1,050,000 cattle, valued at \$809 million. (In addition, there were, in Michigan, 50 operations with bison, with a total of

2,984 animals.) Of the cattle, those that would require testing if they were moved interstate include all animals, except for those moved directly to slaughter and those from an accredited herd, which constitute a negligible percentage of the total number of cattle in the State. Of the animals that would require testing if moved interstate, only about 10 percent (105,000) are likely to be moved interstate. To be moved interstate, each of those animals will require an individual tuberculosis test with negative results. Additionally, of the animals to be moved interstate, an estimated 79,900 will be sexually intact animals that are not from an accredited herd and are not sexually intact heifers moved to an approved feedlot. Under this rule, in addition to requiring an individual test, these animals may not be moved interstate unless they originate in a herd that was classified negative to a whole herd test within 1 year prior to the date of interstate movement. Based on an average herd size in Michigan of approximately 89 animals per herd, approximately 1,180 herds would need to undergo a whole herd test under this final rule.

The cost of tuberculin testing for an average-sized herd of 89 animals is \$380. The approximate per-animal testing cost is \$4.30, compared to an average sale value of approximately \$600 for a head of cattle and \$1,500 for a bison. Additionally, the cost of official identification by applying an eartag is about \$0.50 per head. The final cost of testing and identification will vary depending on the size of the herd. The total cost will then be dependent on the number of animals that will be moved interstate and thus be required to be tested and identified.

Applying the unit testing and identification costs to the number of animals that are likely to be moved interstate and that require testing and identification yields the approximate economic effect of this rule. In Texas, the testing and identification cost is projected to be approximately \$4,919,000 annually $[(1,143,980 \text{ animals} \times \$4.30) + (1,143,980 \times \$0.50)]$. In Michigan, the testing cost is projected to be approximately \$899,900 annually (the total of 105,000 individual animal tests \times \$4.30 and 1,180 whole herd tests \times \$380). The identification cost is projected to be approximately \$52,500 $(105,000 \text{ animals} \times \$0.50)$, for a total testing and identification cost in Michigan of \$952,400. These costs are relatively small when compared to the total size and significance of the cattle and bison industry in each of the two States and in the United States overall.

Captive Cervids

This rule also establishes five risk classifications for States and zones with regard to captive cervids. The classifications are the same as those established for cattle and bison, but a State's or zone's classification for captive cervids will not necessarily be the same as its classification for cattle and bison. According to this classification system, all States (and Puerto Rico and the U.S. Virgin Islands) will be modified accredited. Fewer than 10 percent of captive cervids are moved interstate. Those not moved interstate will not be subject to this rule. Under this rule, owners of captive cervids to be moved interstate will be able to move their animals according to the less restrictive of either the animals' herd status under the current regulations or the State or zone status in this final rule. Because of this option, this rule is not expected to have a direct economic effect on owners of captive cervids, with one possible exception. Under the current regulations, captive cervids from an "unclassified" herd may be moved interstate after testing negative to two individual tuberculosis tests. Under this rule, the option of moving captive cervids interstate from an unclassified herd after two negative tests will no longer exist, and such cervids moved interstate will be required to meet the movement conditions for the status of the State or zone from which they originate. In Michigan, those captive cervids, in addition to testing negative to one individual tuberculosis test, would need to originate from herds that have tested negative to a whole herd test conducted within 1 year prior to the date of interstate movement of the cervids.

In Michigan, there are about 18,800 captive cervids on 720 premises. An estimated 11,280 of these animals are in unclassified herds. Of these, approximately 10 percent, or 1,128, are likely to be moved interstate. Thus, the cost of individually testing each of the captive cervids is projected to be about \$4,850 (1,128 × \$4.30). The cost of testing the herds from which the animals originate is projected to be about \$5,060 (44 herds × \$115 average cost for herd testing). The cost of identifying the captive cervids is projected to be about \$564 (1,128 × \$0.50). Therefore, the projected total cost this rule will impose on the interstate movement of captive cervids from Michigan is \$10,474, compared to an approximate value of the cervid industry in Michigan of \$31.8 million.

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 final 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

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0146.

List of Subjects in 9 CFR Part 77

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

Accordingly, we are revising 9 CFR part 77 to read as follows:

PART 77—TUBERCULOSIS

Subpart A—General Provisions

Sec.

- 77.1 Material incorporated by reference.
- 77.2 Definitions.
- 77.3 Tuberculosis classifications of States and zones.
- 77.4 Application for and retention of zones.

Subpart B—Cattle and Bison

- 77.5 Definitions.
- 77.6 Applicability of this subpart.
- 77.7 Accredited-free States or zones.
- 77.8 Interstate movement from accredited-free States and zones.
- 77.9 Modified accredited advanced States or zones.
- 77.10 Interstate movement from modified accredited advanced States and zones.
- 77.11 Modified accredited States or zones.
- 77.12 Interstate movement from modified accredited States and zones.
- 77.13 Accreditation preparatory States or zones.
- 77.14 Interstate movement from accreditation preparatory States and zones.
- 77.15 Nonaccredited States or zones.

- 77.16 Interstate movement from nonaccredited States and zones.
- 77.17 Interstate movement of cattle and bison that are exposed, reactors, or suspects, or from herds containing suspects.
- 77.18 Other movements.
- 77.19 Cleaning and disinfection of premises, conveyances, and materials.

Subpart C—Captive Cervids

- 77.20 Definitions.
- 77.21 Applicability of this subpart.
- 77.22 Accredited-free States or zones.
- 77.23 Interstate movement from accredited-free States and zones.
- 77.24 Modified accredited advanced States or zones.
- 77.25 Interstate movement from modified accredited advanced States and zones.
- 77.26 Modified accredited States or zones.
- 77.27 Interstate movement from modified accredited States and zones.
- 77.28 Accreditation preparatory States or zones.
- 77.29 Interstate movement from accreditation preparatory States and zones.
- 77.30 Nonaccredited States or zones.
- 77.31 Interstate movement from nonaccredited States and zones.
- 77.32 General restrictions.
- 77.33 Testing procedures for tuberculosis in captive cervids.
- 77.34 Official tuberculosis tests.
- 77.35 Interstate movement from accredited herds.
- 77.36 Interstate movement from qualified herds.
- 77.37 Interstate movement from monitored herds.
- 77.38 Interstate movement from herds that are not accredited, qualified, or monitored.
- 77.39 Other interstate movements.
- 77.40 Procedures for and interstate movement to necropsy and slaughter.
- 77.41 Cleaning and disinfection of premises, conveyances, and materials.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.4.

Subpart A—General Provisions

§ 77.1 Material incorporated by reference.

Uniform Methods and Rules—Bovine Tuberculosis Eradication. The Uniform Methods and Rules—Bovine Tuberculosis Eradication (January 22, 1999, edition) has been 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.

(a) The procedures specified in the Uniform Methods and Rules—Bovine Tuberculosis Eradication (January 22, 1999, edition) must be followed for the interstate movement of certain animals regulated under this part.

(b) *Availability.* Copies of the Uniform Methods and Rules—Bovine Tuberculosis Eradication:

(1) Are available for inspection at the Office of the Federal Register Library, 800 North Capitol Street NW., Suite 700, Washington, DC;

(2) Are available for inspection at the APHIS reading room, room 1141, USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC; or

(3) May be obtained from the National Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231.

§ 77.2 Definitions.

As used in this part, the following terms shall have the meanings set forth in this section except as otherwise specified.

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.

Animal. All species of animals except man, birds, or reptiles.

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

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

Area veterinarian in charge. The veterinary official of APHIS who is assigned by the Administrator to supervise and perform the official animal health work of APHIS in the State concerned.

Certificate. An official document issued by an APHIS representative, a State representative, or an accredited veterinarian at the point of origin of a shipment of livestock to be moved under this part, which shows the identification tag, tattoo, or registration number or similar identification of each animal to be moved; the number, breed, sex, and approximate age of the animals covered by the document; the purpose for which the animals are to be moved; the date and place of issuance; the points of origin and destination; the consignor and the consignee; and which states that the animal or animals identified on the certificate meet the requirements of this part.

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 livestock in a herd by slaughter or by death otherwise.

Designated tuberculosis epidemiologist (DTE). A State or Federal epidemiologist designated by the Administrator to make decisions concerning the use and interpretation of diagnostic tests for tuberculosis and the management of tuberculosis affected herds. A DTE has the responsibility to determine the scope of epidemiologic investigations, determine the status of animals and herds, assist in the development of individual herd plans, and coordinate disease surveillance and eradication programs within the geographic area of the DTE's responsibility.

Epidemiologic investigation. An investigation that is conducted by a State in conjunction with APHIS representatives, in which an official test for tuberculosis is conducted on all livestock in any tuberculosis-affected herd in a State or zone, all livestock in any herd into which livestock from the affected herd have been moved, all potential tuberculosis source herds, and all livestock herds and animals that are likely to have been exposed to the affected herd.

Herd. Except for livestock assembled at feedlots, any group of livestock maintained on common ground for any purpose, or two or more groups of livestock under common ownership or supervision, geographically separated but that have an interchange or movement of livestock without regard to health status, as determined by the Administrator. (A group means one or more animals.)

Interstate. From one State into or through any other State.

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, as well as previously free-ranging cervids that are captured, identified, and moved interstate.

Moved. Shipped, transported, or otherwise moved, or delivered or received for movement.

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

Official eartag. An eartag approved by the Administrator as providing unique identification for each individual animal by conforming to the alphanumeric National Uniform Eartagging System.

Official seal. A seal issued by a State or APHIS representative, consisting of a serially numbered, metal or plastic strip, with a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged and that cannot be reused if opened, or a serially numbered, self-locking button that can be used for this purpose.

Officially identified. Identified by means of an official eartag or by means of an individual tattoo or hot brand that provides unique identification for each animal.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

Premises of origin identification. Either an APHIS-approved eartag or tattoo bearing the premises of origin identification code that consists of the State postal abbreviation followed by a unique number or name assigned by a State or Federal animal health official to the premises on which the animals originated that, in the judgment of the State animal health official or area veterinarian in charge, is epidemiologically distinct from other premises; or a brand registered with an official brand registry.

State. Any State, the District of Columbia, Puerto Rico, or any territory of the United States.

State animal health official. The State official responsible for livestock and poultry disease control and eradication programs.

State representative. A veterinarian or other person employed in livestock sanitary work of a State or a political subdivision of a State and who is authorized by such State or political subdivision of a State to perform the function involved under a memorandum of understanding with APHIS.

Transportation document. Any document accompanying the interstate movement of livestock, such as an owner's statement, manifest, switch order, or vehicle record, on which is stated the point from which the animals are moved interstate, the destination of the animals, the number of animals covered by the document, and the name and address of the owner or shipper.

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

Zone. A defined geographic land area identifiable by geological, political, manmade, or surveyed boundaries, with mechanisms of disease spread, epidemiological characteristics, and the ability to control the movement of animals across the boundaries of the zone taken into account.

§ 77.3 Tuberculosis classifications of States and zones.

The Administrator shall classify each State for tuberculosis in accordance with this part. A zone comprising less than an entire State will be given a particular classification upon request of the State only if the Administrator determines that:

(a) The State meets the requirements of this part for establishment of zones;

(b) The State has adopted and is enforcing regulations that impose restrictions on the intrastate movement of cattle, bison, and captive cervids that are substantially the same as those in place under this part for the interstate movement of cattle, bison, and captive cervids; and

(c) The designation of part of a State as a zone will otherwise be adequate to prevent the interstate spread of tuberculosis.

§ 77.4 Application for and retention of zones.

(a) A State animal health official may request at any time that the Administrator designate part of a State as having a different tuberculosis classification under this part than the rest of the State. The requested zones must be delineated by the State animal health authorities, subject to approval by the Administrator. The request from the State must demonstrate that the State complies with the following requirements:

(1) The State must have the legal and financial resources to implement and enforce a tuberculosis eradication program and must have in place an infrastructure, laws, and regulations that require and ensure that State and Federal animal health authorities are notified of tuberculosis cases in domestic livestock or outbreaks in wildlife;

(2) The State in which the intended zones are located must maintain, in each intended zone, clinical and epidemiologic 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; and

(3) 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.

(b) Retention of APHIS recognition of a zone is subject to annual review by the Administrator. To retain recognition of a zone, a State must continue to comply with the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this section, as well as the requirements for maintaining or improving the tuberculosis risk classification of each zone in the State, and must retain for at least 2 years all certificates required under this part for the movement of cattle, bison, and captive cervids.

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Subpart B—Cattle and Bison

§ 77.5 Definitions.

As used in subpart B, the following terms shall have the meanings set forth in this section except as otherwise specified.

Accreditation preparatory State or zone. A State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the “Uniform Methods and Rules—Bovine Tuberculosis Eradication” and in which tuberculosis is prevalent in less than 0.5 percent of the total number of herds of cattle and bison in the State or zone.

Accredited-free State or zone. A State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the “Uniform Methods and Rules—Bovine Tuberculosis Eradication,” has zero percent prevalence of affected cattle and bison herds, and has had no findings of tuberculosis in any cattle or bison herds in the State or zone for the previous 5 years. *Except that:* The requirement of freedom from tuberculosis in herds is 2 years from the depopulation of the last affected herd in States or zones that were previously accredited free and in which all herds affected with tuberculosis were depopulated, 3 years in all other States or zones that have depopulated all affected herds, and 3 years in States or zones that have conducted surveillance that demonstrates that other livestock herds and wildlife are not at risk of being infected with tuberculosis, as determined by the Administrator based on a risk assessment conducted by APHIS.

Accredited herd. To establish or maintain accredited herd status, the

herd owner must comply with all of the provisions of the “Uniform Methods and Rules—Bovine Tuberculosis Eradication” regarding accredited herds. All cattle and bison in a herd must be free from tuberculosis.

Affected herd. A herd in which tuberculosis has been disclosed in any cattle or bison by an official tuberculin test or by post mortem examination.

Approved feedlot. A confined area approved jointly by the State animal health official and the Administrator for feeding cattle and bison for slaughter, with no provisions for pasturing or grazing.

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 State-inspected slaughtering establishment that has inspection by a State inspector at the time of slaughter.

Cattle and bison not known to be affected. All cattle and bison except those originating from tuberculosis affected herds or from herds containing tuberculosis suspect cattle or bison.

Department. The U.S. Department of Agriculture (USDA).

Exposed cattle and bison. Cattle and bison, except reactor cattle and bison, that are part of an affected herd.

Feedlot. A facility for congregating finished fed cattle prior to their being shipped to slaughter.

Finished fed cattle. Cattle fattened on a ration of feed concentrates to reach a slaughter condition equivalent to that which would be attained on full feed with a high concentrate grain ration for 90 days.

Modified accredited advanced State or zone. A State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the “Uniform Methods and Rules—Bovine Tuberculosis Eradication” and in which tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of cattle and bison in the State or zone for each of the most recent 2 years. *Except that:* The Administrator, upon his or her review, may allow a State or zone with fewer than 30,000 herds to have up to 3 affected herds for each of the most recent 2 years, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

Modified accredited State or zone. A State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the “Uniform Methods and Rules—Bovine Tuberculosis Eradication” and in which tuberculosis has been prevalent in less

than 0.1 percent of the total number of herds of cattle and bison in the State or zone for the most recent year. *Except that:* The Administrator, upon his or her review, may allow a State or zone with fewer than 10,000 herds to have up to 10 affected herds for the most recent year, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

Negative cattle and bison. Cattle and bison that are classified negative for tuberculosis in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," based on the results of an official tuberculin test.

Nonaccredited State or zone. A State or zone that is or is part of a State that does not meet the standards of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" or in which tuberculosis is prevalent in 0.5 percent or more of the total number of herds of cattle and bison in the State or zone.

Official tuberculin test. Any test for tuberculosis conducted on cattle or bison in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication."

Permit. An official document issued for movement of cattle or bison under this part by an APHIS representative, State representative, or an accredited veterinarian at the point of origin of a shipment of cattle or bison to be moved directly to slaughter, that shows the tuberculosis status of each animal (reactor, suspect, or exposed), the eartag number of each animal and the name of the owner of such animal, the establishment to which the animals are to be moved, the purpose for which the animals are to be moved, and that they are eligible for such movement under the applicable provisions of §§ 77.17 and 77.18.

Quarantined feedlot. A confined area under the direct supervision and control of a State livestock official who shall establish procedures for the accounting of all livestock entering or leaving the area. The quarantined feedlot shall be maintained for finish feeding of livestock in drylot with no provision for pasturing and grazing. All livestock leaving such feedlot must only move directly to slaughter in accordance with established procedures for handling quarantined livestock.

Reactor cattle and bison. Cattle and bison that are classified as reactors for tuberculosis in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication."

Suspect cattle and bison. Cattle and bison that are classified as suspects for tuberculosis in accordance with the

"Uniform Methods and Rules—Bovine Tuberculosis Eradication."

Uniform Methods and Rules—Bovine Tuberculosis Eradication. Uniform methods and rules for eradicating bovine tuberculosis in the United States, approved by APHIS on January 22, 1999, which is incorporated by reference at § 77.1.

Whole herd test. An official tuberculin test of all cattle and bison in a herd that are 12 months of age or older, and of all cattle and bison in the herd that are less than 12 months of age and were not born into the herd, except those cattle and bison that are less than 12 months of age and were born in and originated from an accredited herd.

Zero percent prevalence. No finding of tuberculosis in any cattle, bison, or goat herd in a State or zone.

§ 77.6 Applicability of this subpart.

All references in this subpart to the tuberculosis status of States and zones pertain to such status for cattle and bison only.

§ 77.7 Accredited-free States or zones.

(a) The following are accredited-free States: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, the Virgin Islands of the United States, Washington, West Virginia, Wisconsin, and Wyoming.

(b) The following are accredited-free zones: None.

(c) If an affected herd is detected in a State or zone classified as accredited-free, and the herd is depopulated and an epidemiologic investigation is completed within 90 days of the detection of the affected herd with no evidence of the spread of tuberculosis, the State or zone may retain its accredited-free status. If two or more affected herds are detected in an accredited-free State or zone within a 48-month period, the State or zone will be removed from the list of accredited-free States or zones and will be reclassified as modified accredited advanced.

(d) If any livestock other than cattle or bison are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated,

the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (January 22, 1999, edition), which is incorporated by reference at § 77.1, to those other livestock in the same manner as to cattle and bison. Failure to do so will result in reclassification of the State or zone as modified accredited advanced.

(e) If tuberculosis is diagnosed within an accredited-free State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in animals held for exhibition and in livestock and wildlife; the prevention of the spread of the disease to other animals held for exhibition and to livestock and wildlife; increased surveillance for tuberculosis in animals held for exhibition and wildlife; eradication of tuberculosis from individual herds; a timeline for tuberculosis eradication; and performance standards by which to measure yearly progress toward eradication. If a State or zone does not implement such a plan within the required 6 months, the State or zone will lose its accredited-free status and will be reclassified as modified accredited advanced.

(f) Accredited-free State or zone status must be renewed annually. To qualify for renewal of accredited-free State or zone status, a State must submit an annual report to APHIS certifying that the State or zone within the State complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication." The report must be submitted to APHIS each year between October 1 and November 30.

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§ 77.8 Interstate movement from accredited-free States and zones.

Cattle or bison that originate in an accredited-free State or zone may be moved interstate without restriction.

§ 77.9 Modified accredited advanced States or zones.

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

(b) The following are modified accredited zones: None.

(c) If any livestock other than cattle or bison are included in a newly

assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (January 22, 1999), which is incorporated by reference at § 77.1, for such newly assembled herds to those other livestock in the same manner as to cattle and bison. Failure to do so will result in the removal of the State or zone from the list of modified accredited advanced States or zones and its being reclassified as modified accredited.

(d) If tuberculosis is diagnosed within a modified accredited advanced State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in animals held for exhibition and in livestock and wildlife; the prevention of the spread of the disease to other animals held for exhibition and to livestock and wildlife; increased surveillance for tuberculosis in animals held for exhibition and wildlife; eradication of tuberculosis from individual herds; a timeline for tuberculosis eradication; and performance standards by which to measure yearly progress toward eradication. If a State or zone does not implement such a plan within the required 6 months, the State or zone will be reclassified as modified accredited.

(e) Modified accredited advanced State or zone status must be renewed annually. To qualify for renewal of a modified accredited advanced State or zone status, a State must submit an annual report to APHIS certifying that the State or zone complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication." The report must be submitted to APHIS each year between October 1 and November 30.

(f) To qualify for accredited-free status, a modified accredited advanced State or zone must demonstrate to the Administrator that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," has zero percent prevalence of affected cattle and bison herds, and has had no findings of tuberculosis in any cattle or bison in the State or zone for the previous 5 years.

Except that: The requirement of freedom from tuberculosis is 2 years from the depopulation of the last affected herd in States or zones that were previously accredited free and in which all herds affected with tuberculosis were depopulated, 3 years in all other States or zones that have depopulated all affected herds, and 3 years in States or zones that have conducted surveillance that demonstrates that other livestock herds and wildlife are not at risk of being infected with tuberculosis, as determined by the Administrator based on a risk assessment conducted by APHIS.

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§ 77.10 Interstate movement from modified accredited advanced States and zones.

Cattle or bison that originate in a modified accredited advanced State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

(a) The cattle or bison are moved directly to slaughter at an approved slaughtering establishment.

(b) 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.

(c) 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.

(d) 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.

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§ 77.11 Modified accredited States or zones.

(a) The following are modified accredited States: None.

(b) The following are modified accredited zones: None.

(c) If any livestock other than cattle or bison are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (January 22, 1999, edition), which is incorporated by

reference at § 77.1, for such newly assembled herds to those other livestock in the same manner as to cattle and bison. Failure to do so will result in the removal of the State or zone from the list of modified accredited States or zones and its being reclassified as accreditation preparatory.

(d) If tuberculosis is diagnosed within a modified accredited State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in animals held for exhibition and in livestock and wildlife; the prevention of the spread of the disease to other animals held for exhibition and to livestock and wildlife; increased surveillance for tuberculosis in animals held for exhibition and wildlife; eradication of tuberculosis from individual herds; a timeline for tuberculosis eradication; and performance standards by which to measure yearly progress toward eradication. If a State or zone does not implement such a plan within the required 6 months, the State or zone will be reclassified as accreditation preparatory.

(e) Modified accredited State or zone status must be renewed annually. To qualify for renewal of a modified accredited State or zone status, a State must submit an annual report to APHIS certifying that the State or zone complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication." The report must be submitted to APHIS each year between October 1 and November 30.

(f) To qualify for modified accredited advanced status, a modified accredited State or zone must demonstrate to the Administrator that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and that tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of cattle and bison in the State or zone for the most recent 2 years. *Except that:* The Administrator, upon his or her review, may allow a State or zone with fewer than 30,000 herds to have up to 3 affected herds for each of the most recent 2 years, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control

and eradication measures in the State or zone.

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§ 77.12 Interstate movement from modified accredited States and zones.

Cattle or bison that originate in a modified accredited State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

(a) The cattle or bison are moved directly to slaughter at an approved slaughtering establishment.

(b) The cattle or bison are sexually intact heifers moved to an approved feedlot, or are steers or spayed heifers; are either officially identified or identified by premises of origin identification; and are accompanied by a certificate stating that they were classified negative to an official tuberculin test conducted within 60 days prior to the date of movement.

(c) 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.

(d) 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 the herd from which they originated was negative to a whole herd test conducted within 1 year prior to the date of movement and that the individual animals to be moved were negative to an additional official tuberculin test conducted within 60 days prior to the date of movement, except that the additional test is not required if the animals are moved interstate within 6 months following the whole herd test.

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§ 77.13 Accreditation preparatory States or zones.

(a) The following are accreditation preparatory States: None.

(b) The following are accreditation preparatory zones: None.

(c) If any livestock other than cattle or bison are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (January 22, 1999 edition), which is incorporated by reference at § 77.1, for such newly assembled herds to those other livestock

in the same manner as to cattle and bison. Failure to do so will result in the removal of the State or zone from the list of accreditation preparatory States or zones and its being reclassified as nonaccredited.

(d) If tuberculosis is diagnosed within an accreditation preparatory State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in animals held for exhibition and in livestock and wildlife; the prevention of the spread of the disease to other animals held for exhibition and to livestock and wildlife; increased surveillance for tuberculosis in animals held for exhibition and wildlife; eradication of tuberculosis from individual herds; a timeline for tuberculosis eradication; and performance standards by which to measure yearly progress toward eradication. If a State or zone does not implement such a plan within the required 6 months, the State or zone will be reclassified as nonaccredited.

(e) Accreditation preparatory State or zone status must be renewed annually. To qualify for renewal of accreditation preparatory State or zone status, a State must submit an annual report to APHIS certifying that the State or zone complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication." The report must be submitted to APHIS each year between October 1 and November 30.

(f) To qualify for modified accredited status, an accreditation preparatory State or zone must demonstrate to the Administrator that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and that tuberculosis has been prevalent in less than 0.1 percent of the total number of herds of cattle and bison in the State or zone for the most recent year. *Except that:* The Administrator, upon his or her review, may allow a State or zone with fewer than 10,000 herds to have up to 10 affected herds for the most recent year, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

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§ 77.14 Interstate movement from accreditation preparatory States and zones.

Cattle or bison that originate in an accreditation preparatory State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

(a) The cattle or bison are moved directly to slaughter at an approved slaughtering establishment.

(b) The cattle or bison are sexually intact heifers moved to an approved feedlot, or are steers or spayed heifers; are officially identified or identified by a premises of origin identification; and are accompanied by a certificate stating that the herd from which they originated was negative to a whole herd test conducted within 1 year prior to the date of movement and that the individual animals to be moved were negative to an additional official tuberculin test conducted within 60 days prior to the date of movement, except that the additional test is not required if the animals are moved interstate within 6 months following the whole herd test.

(c) The cattle or bison are from an accredited herd; are officially identified; 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 and that the animals to be moved were negative to an official tuberculin test conducted within 60 days prior to the date of movement.

(d) 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 the herd from which they originated was negative to a whole herd test conducted within 1 year prior to the date of movement and that the individual animals to be moved were negative to two additional official tuberculin tests conducted at least 60 days apart and no more than 6 months apart, with the second test conducted within 60 days prior to the date of movement, except that the second additional test is not required if the animals are moved interstate within 6 months following the whole herd test.

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§ 77.15 Nonaccredited States or zones.

(a) The following are nonaccredited States: None.

(b) The following are nonaccredited zones: None.

(c) To qualify for accreditation preparatory status, a nonaccredited State or zone must demonstrate to the

Administrator that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and that tuberculosis is prevalent in less than 0.5 percent of the total number of herds of cattle and bison in the State or zone.

§ 77.16 Interstate movement from nonaccredited States and zones.

Cattle or bison that originate in a nonaccredited State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only if the cattle or bison are accompanied by VS Form 1–27 and are moved interstate for slaughter in an officially sealed means of conveyance directly to an approved slaughtering establishment.

§ 77.17 Interstate movement of cattle and bison that are exposed, reactors, or suspects, or from herds containing suspects.

(a) *Reactor cattle and bison.* Cattle or bison that have been classified as reactor cattle or bison may be moved interstate only if they are moved directly to slaughter at an approved slaughtering establishment and only in accordance with the following conditions:

(1) Reactor cattle and bison must be individually identified by attaching to the left ear an approved metal eartag bearing a serial number and the inscription "U.S. Reactor," or a similar State reactor tag, and must be:

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

(ii) Permanently identified with the letters "TB" tattooed legibly in the left ear and sprayed with yellow paint on the left ear and either accompanied directly to slaughter by an APHIS or State representative or moved directly to slaughter in vehicles 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.

(2) The reactor cattle or bison must be accompanied by a permit; and

(3) The reactor cattle or bison may not be moved interstate in a means of conveyance containing any animals susceptible to tuberculosis unless all of the animals are being moved directly to slaughter; and

(4) Any person who moves reactor cattle or bison interstate under this paragraph must plainly write or stamp upon the face of the transportation document the words "Tuberculin

Reactor" and the following statement: "This conveyance must be cleaned and disinfected in accordance with 9 CFR 77.17(a)(5)."; and

(5) Each means of conveyance in which reactor cattle or bison have been transported interstate under this paragraph must be cleaned and disinfected by the carrier, in accordance with the provisions of §§ 71.6, 71.7, and 71.10 of this subchapter, under the supervision of an APHIS representative or State representative or an accredited veterinarian or other person designated by the Administrator. If, at the point where the cattle or bison are unloaded, such supervision or proper cleaning and disinfecting facilities are not available, and permission is obtained from an APHIS representative or State representative, the empty means of conveyance may be moved to a location where such supervision and facilities are available for cleaning and disinfecting. Permission will be granted if such movement does not present a risk of disseminating tuberculosis.

(b) *Exposed cattle and bison.* Except for the movement of exposed cattle to a quarantined feedlot in accordance with § 50.16 of this chapter, exposed cattle or bison may be moved interstate only if they are moved directly to slaughter to an approved slaughtering establishment and only in accordance with the following conditions:

(1) Exposed cattle and bison must be individually identified by attaching to either ear an approved metal eartag bearing a serial number and must be:

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

(ii) Accompanied directly to slaughter by an APHIS or State representative; or

(iii) Moved directly to slaughter in vehicles 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.

(2) The exposed cattle and bison must be moved in accordance with paragraphs (a)(2), (a)(3), and (a)(5) of this section.

(c) *Suspect cattle and bison.* Suspect cattle or bison from herds in which no reactor cattle or bison have been disclosed on an official tuberculin test, as well as negative cattle or bison from such herds, may be moved interstate only if they are moved directly to slaughter to an approved slaughtering establishment.

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§ 77.18 Other movements.

The Administrator may, with the concurrence of the State animal health official of the State of destination, upon request in specific cases, allow the interstate movement of cattle or bison not otherwise provided for in this part that have not been classified as reactor cattle or bison 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 State animal health official of the State of destination of any such action.

§ 77.19 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.

Subpart C—Captive Cervids

§ 77.20 Definitions.

As used in subpart C, the following terms shall have the meanings set forth in this section except as otherwise specified.

Accreditation preparatory State or zone. A State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and in which tuberculosis is prevalent in less than 0.5 percent of the total number of herds of captive cervids in the State or zone.

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 § 77.33(f) and that meets the standards set forth in § 77.35. The tests must be conducted at 9–15 month intervals.

Accredited-free State or zone. A State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," has zero percent prevalence of affected captive cervid herds, and has had no findings of tuberculosis in any captive cervid herds in the State or zone for the previous 5 years. *Except that:* The requirement of freedom from tuberculosis in herds is 2 years from the depopulation of the last affected herd in States or zones that were previously accredited free and in which all herds affected with tuberculosis were depopulated, 3 years in all other States or zones that have depopulated all affected herds, and 3 years in States or zones that have conducted surveillance that demonstrates that other livestock herds and wildlife are not at risk of being infected with tuberculosis, as determined by the Administrator based on a risk assessment conducted by APHIS.

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 § 77.39(d) of this part.

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, including time such animals are moved interstate; or any wild cervid that is moved interstate, during the period of time from capture until release into the wild. 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.

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.

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.

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.

Modified accredited State or zone. A State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and in which tuberculosis has been prevalent in less than 0.1 percent of the total number of herds of captive cervids in the State or zone for the most recent year. *Except that:* The Administrator, upon his or her review, may allow a State or zone with fewer than 10,000 herds to have up to 10 affected herds for the most recent year, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

Modified accredited advanced State or zone. A State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and in which tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of captive cervids in the State or zone for the most recent 2 years. *Except that:* The Administrator, upon his or her review, may allow a State or zone with fewer than 30,000 herds to have up to 3 affected herds for each of the most recent 2 years, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

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 § 77.37.

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.

Nonaccredited State or zone. A State or zone that is or is part of a State or zone that does not meet the standards of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" or in which tuberculosis is prevalent in 0.5 percent or more of the total number of herds of captive cervids in the State or zone.

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

- (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.

Purified protein derivative (PPD). Protein extract from an *M. bovis* culture that is resuspended in solution at a standard concentration of 1 mg protein per 1 mL of solution.

Qualified herd. A herd of captive cervids that has tested negative to at least one official tuberculosis test of all eligible captive cervids (see § 77.33(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 a 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.

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 captive cervids in a herd that are 12 months of age or older, and of all captive cervids in the herd that are less than 12 months of age and were not born into the herd, except those captive cervids that are less than 12 months of age and were born in and originated from an accredited herd.

Zero percent prevalence. No finding of tuberculosis in any herd of captive cervids in a State or zone.

§ 77.21 Applicability of this subpart.

All references in this subpart to the tuberculosis status of States and zones pertain to such status for captive cervids.

§ 77.22 Accredited-free States or zones.

(a) The following are accredited-free States: None.

(b) The following are accredited-free zones: None.

(c) If an affected herd is detected in a State or zone classified as accredited-free, and the herd is depopulated and a complete epidemiologic investigation is completed within 120 days of the detection of the affected herd with no evidence of the spread of tuberculosis, the State or zone may retain its accredited-free status. If two or more affected herds are detected in an accredited-free State or zone within a 48-month period, the State or zone will be removed from the list of accredited-free States or zones and will be reclassified as modified accredited advanced.

(d) If any livestock other than captive cervids are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (January 22, 1999 edition), which is incorporated by reference at § 77.1, to those other livestock in the same manner as to captive cervids. Failure to do so will result in reclassification of the State or zone as modified accredited advanced.

(e) If tuberculosis is diagnosed within an accredited-free State or zone in an

animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in animals held for exhibition and in livestock and wildlife; the prevention of the spread of the disease to other animals held for exhibition and to livestock and wildlife; increased surveillance for tuberculosis in animals held for exhibition and wildlife; eradication of tuberculosis from individual herds; a timeline for tuberculosis eradication; and performance standards by which to measure yearly progress toward eradication. If a State or zone does not implement such a plan within the required 6 months, the State or zone will lose its accredited-free status and will be reclassified as modified accredited advanced.

(f) Accredited-free State or zone status must be renewed annually. To qualify for renewal of accredited-free State or zone status, a State must submit an annual report to APHIS certifying that the State or zone within the State complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication." The report must be submitted to APHIS each year between October 1 and November 30.

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§ 77.23 Interstate movement from accredited-free States and zones.

Notwithstanding any other provisions of this part, captive cervids that originate in an accredited-free State or zone may be moved interstate without restriction.

§ 77.24 Modified accredited advanced States or zones.

(a) The following are modified accredited advanced States: None.

(b) The following are modified accredited advanced zones: None.

(c) If any livestock other than captive cervids are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (January 22, 1999 edition), which is incorporated by reference at § 77.1, for such newly assembled herds to those other livestock in the same manner as to captive

cervids. Failure to do so will result in the removal of the State or zone from the list of modified accredited advanced States or zones and its being reclassified as modified accredited.

(d) If tuberculosis is diagnosed within a modified accredited advanced State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in animals held for exhibition and in livestock and wildlife; the prevention of the spread of the disease to other animals held for exhibition and to livestock and wildlife; increased surveillance for tuberculosis in animals held for exhibition and wildlife; eradication of tuberculosis from individual herds; a timeline for tuberculosis eradication; and performance standards by which to measure yearly progress toward eradication. If a State or zone does not implement such a plan within the required 6 months, the State or zone will be reclassified as modified accredited.

(e) Modified accredited advanced State or zone status must be renewed annually. To qualify for renewal of a modified accredited advanced State or zone status, a State must submit an annual report to APHIS certifying that the State or zone complies with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding modified accredited advanced States. The report must be submitted to APHIS each year between October 1 and November 30.

(f) To qualify for accredited-free status, a modified accredited advanced State or zone must demonstrate to the Administrator that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," has zero percent prevalence of affected captive cervid herds, and has had no findings of tuberculosis in any captive cervids in the State or zone for the previous 5 years. *Except that:* The requirement of freedom from tuberculosis is 2 years from the depopulation of the last affected herd in States or zones that were previously accredited-free and in which all herds affected with tuberculosis were depopulated, 3 years in all other States or zones that have depopulated all affected herds, and 3

years in States or zones that have conducted surveillance that demonstrates that other livestock herds and wildlife are not at risk of being infected with tuberculosis, as determined by the Administrator based on a risk assessment conducted by APHIS.

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§ 77.25 Interstate movement from modified accredited advanced States and zones.

Captive cervids that originate in a modified accredited advanced State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

(a) The captive cervids are moved directly to slaughter at an approved slaughtering establishment.

(b) The captive cervids are from an accredited herd, qualified herd, or monitored herd; are officially identified; and are accompanied by a certificate stating that the herd completed the requirements for accredited herd, qualified herd, or monitored herd status within 24 months prior to the date of movement.

(c) The captive cervids are officially identified and are accompanied by a certificate stating that they were negative to an official tuberculin test conducted within 90 days prior to the date of movement.

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§ 77.26 Modified accredited States or zones.

(a) States listed in paragraph (b) of this section must submit to APHIS¹ by October 23, 2001 data demonstrating that the State complies with the UMR or the State will be redesignated as nonaccredited. If a State does submit surveillance data by October 23, 2001 that meets the UMR standards, and that APHIS believes qualifies the State for a classification other than modified accredited, APHIS will initiate rulemaking to change the State's classification.

(b) The following are modified accredited States: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New

Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, the Virgin Islands of the United States, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

(c) The following are modified accredited zones: None.

(d) If any livestock other than captive cervids are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (January 22, 1999, edition), which is incorporated by reference at § 77.1, for such newly assembled herds to those other livestock in the same manner as to captive cervids. Failure to do so will result in the removal of the State or zone from the list of modified accredited States or zones and its being reclassified as accreditation preparatory.

(e) If tuberculosis is diagnosed within a modified accredited State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in animals held for exhibition and in livestock and wildlife; the prevention of the spread of the disease to other animals held for exhibition and to livestock and wildlife; increased surveillance for tuberculosis in animals held for exhibition and wildlife; eradication of tuberculosis from individual herds; a timeline for tuberculosis eradication; and performance standards by which to measure yearly progress toward eradication. If a State or zone does not implement such a plan within the required 6 months, the State or zone will be reclassified as accreditation preparatory.

(f) Modified accredited State or zone status must be renewed annually. To qualify for renewal of a modified accredited State or zone status, a State must submit an annual report to APHIS certifying that the State or zone complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication." The report

must be submitted to APHIS each year between October 1 and November 30.

(g) To qualify for modified accredited advanced status, a modified accredited State or zone must demonstrate to the Administrator that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and that tuberculosis has been prevalent in less than 0.01 percent of the total number of captive cervids in the State or zone for the most recent 2 years. *Except that:* The Administrator, upon his or her review, may allow a State or zone with fewer than 30,000 herds to have up to 3 affected herds for each of the most recent 2 years, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

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§ 77.27 Interstate movement from modified accredited States and zones.

Except for captive cervids from a qualified herd or monitored herd, as provided in §§ 77.36 and 77.37, respectively, captive cervids that originate in a modified accredited State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

(a) The captive cervids are moved directly to slaughter at an approved slaughtering establishment.

(b) The captive cervids 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 24 months prior to the date of movement.

(c) The captive cervids are sexually intact animals; are not from an accredited herd; are officially identified; and are accompanied by a certificate stating that the herd from which they originated was negative to a whole herd test conducted within 1 year prior to the date of movement and that the individual animals to be moved were negative to an additional official tuberculin test conducted within 90 days prior to the date of movement, except that the additional test is not required if the animals are moved interstate within 6 months following the whole herd test.

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§ 77.28 Accreditation preparatory States or zones.

(a) The following are accreditation preparatory States: None.

¹ Send the information to National Animal Health Programs, Veterinary Services, APHIS, 4700 River Road, Unit 42, Riverdale, Maryland 20737-1231.

(b) The following are accreditation preparatory zones: None.

(c) If any livestock other than captive cervids are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (January 22, 1999, edition), which is incorporated by reference at § 77.1, for such newly assembled herds to those other livestock in the same manner as to captive cervids. Failure to do so will result in the removal of the State or zone from the list of accreditation preparatory States or zones and its being reclassified as nonaccredited.

(d) If tuberculosis is diagnosed within an accreditation preparatory State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in animals held for exhibition and in livestock and wildlife; the prevention of the spread of the disease to other animals held for exhibition and to livestock and wildlife; increased surveillance for tuberculosis in animals held for exhibition and wildlife; eradication of tuberculosis from individual herds; a timeline for tuberculosis eradication; and performance standards by which to measure yearly progress toward eradication. If a State or zone does not implement such a plan within the required 6 months, the State or zone will be reclassified as nonaccredited.

(e) Accreditation preparatory State or zone status must be renewed annually. To qualify for renewal of accreditation preparatory State or zone status, a State must submit an annual report to APHIS certifying that the State or zone complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication." The report must be submitted to APHIS each year between October 1 and November 30.

(f) To qualify for modified accredited status, an accreditation preparatory State or zone must demonstrate to the Administrator that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and that tuberculosis has been prevalent in less than 0.1 percent of the total number of herds of captive

cervids in the State or zone for the most recent year. *Except that:* The Administrator, upon his or her review, may allow a State or zone with fewer than 10,000 herds to have up to 10 affected herds for the most recent year, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

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§ 77.29 Interstate movement from accreditation preparatory States and zones.

Except for captive cervids from a qualified herd or monitored herd, as provided in §§ 77.36 and 77.37, respectively, captive cervids that originate in an accreditation preparatory State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

(a) The captive cervids are moved directly to slaughter at an approved slaughtering establishment.

(b) The captive cervids are from an accredited herd; are officially identified; and are accompanied by a certificate stating that the accredited herd completed the testing necessary for accredited status with negative results within 24 months prior to the date of movement and that the individual animals to be moved were negative to an official tuberculin test conducted within 90 days prior to the date of movement.

(c) The captive cervids are sexually intact animals; are not from an accredited herd; are officially identified; and are accompanied by a certificate stating that the herd from which they originated was negative to a whole herd test conducted within 1 year prior to the date of movement and that the individual animals to be moved were negative to two additional official tuberculin tests conducted at least 90 days apart and no more than 6 months apart, with the second test conducted within 90 days prior to the date of movement, except that the second additional test is not required if the animals are moved interstate within 6 months following the whole herd test.

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§ 77.30 Nonaccredited States or zones.

(a) The following are nonaccredited States: None.

(b) The following are nonaccredited zones: None.

(c) To qualify for accreditation preparatory status, a nonaccredited State or zone must demonstrate to the Administrator that it complies with the

provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and that tuberculosis is prevalent in less than 0.5 percent of the total number of herds of captive cervids in the State or zone.

§ 77.31 Interstate movement from nonaccredited States and zones.

Captive cervids that originate in a nonaccredited State or zone and that are not known to be infected with or exposed to tuberculosis may not be moved interstate only if they are accompanied by VS Form 1-27 and are moved interstate in an officially sealed means of conveyance directly to slaughter at an approved slaughtering establishment.

§ 77.32 General restrictions.

(a) Except for movement from accredited-free States and zones in accordance with § 77.23, movement from accredited herds in accordance with § 77.35, and movement to slaughter in accordance with §§ 77.25(a), 77.27(a), 77.29(a), and 77.31(d), 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 part.

(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 § 7.40.

(c) Except for captive cervids moving interstate under permit directly to slaughter or necropsy under § 77.40, 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.

(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 part 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.

§ 77.33 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 § 77.34(a)(2) and § 77.39(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, IA. 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 laboratory is approved to perform the BTB test: Texas Veterinary Medical Center laboratory at Texas A&M University in College Station, TX.

(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 § 77.34(a).

(2) Interpretation of a CCT test will be in accordance with the classification requirements described in § 77.34(b).

(3) Interpretation of a BTB test will be in accordance with the patented standards for the BTB test² and the classification requirements described in § 77.34(c).

(f) *Captive cervids eligible for testing.* Except as provided in § 77.35(a)(1) and § 77.36(a)(1), testing of herds for individual herd 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.

§ 77.34 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 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 tuberculin (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 § 77.39(e), any captive cervid classified by the

² 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, TX, or from the Deer Research Laboratory, Department of Microbiology, University of Otago, P.O. Box 56, Dunedin, New Zealand.

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.

§ 77.35 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 § 77.33(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.* Except as provided in § 77.23 with regard to captive cervids that originate in an accredited-free State or zone, and except as provided in § 77.31 with regard to captive cervids that originate in a nonaccredited State or zone, a captive cervid from an accredited herd may be moved interstate without further tuberculosis testing only if it is accompanied by a certificate, as provided in § 77.32(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 during the testing period, but captive cervids in the group need not be isolated from each other during that 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; 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 during the testing period, but captive cervids in the group need not be isolated from each other during that 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 the movement requirements for the State or zone in which the herd is located.

§ 77.36 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 § 77.33(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.* Except as provided in § 77.23 with regard to captive cervids that originate in an accredited-free State or zone, and except as provided in § 77.31 with regard to captive cervids that originate in a nonaccredited State or zone, 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 § 77.32(c), that includes a statement that the captive cervid is from a qualified herd. Except as provided in paragraphs (b)(3) and (b)(4) 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.

(4) Captive cervids being moved interstate for the purpose of exhibition only may be moved without testing, provided they are returned to the premises of origin no more than 90 days after leaving the premises, have no contact with other livestock during movement and exhibition, and are accompanied by a certificate that includes a statement that the captive cervid is from a qualified herd and will otherwise meet the requirements of this paragraph.

(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 isolation 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 during the testing period, but captive cervids in the group need not be isolated from each other during that 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 the movement requirements for the State or zone in which the herd is located.

§ 77.37 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.³ 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.* Except as provided in § 77.23 with regard to captive cervids that originate in an accredited-free State or zone, and except as provided in § 77.31 with regard to captive cervids that originate in a nonaccredited State or zone, 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 § 77.32(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:

(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 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.

(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 during the testing period, but captive cervids in the group need not be isolated from each other during that 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. This report must give the number of captive cervids currently in the herd; 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 the number of 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.

§ 77.38 Interstate movement from herds that are not accredited, qualified, or monitored.

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 part 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.

§ 77.39 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 paragraph (b) of this section 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 paragraph (e) of this section.

(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 § 77.40 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 paragraph (c) of this section.

(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 paragraph (d) of this section.

(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 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 paragraph (a) or (b) of this section. 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 the movement requirements for the State or zone in which the herd is located. In addition, the herd must be given five consecutive annual whole herd tests after release from quarantine. (These five tests will count toward 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 slaughter 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 paragraph (d) of this section.

(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 paragraph (d) of this section.

(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 timeframe, 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 paragraph (a) or (b) of this section. 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.

§ 77.40 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 § 77.20.

(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.

§ 77.41 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.

Done in Washington, DC, this 17th day of October 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

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