

**Authority:** 7 U.S.C. 136a(d)(1)(C), 136i–1, and 450; 7 CFR 2.17, 2.50.

■ 6. Revise § 110.7 to read as follows:

#### § 110.7 Penalties.

Any certified applicator who violates 7 U.S.C. 136i–1(a), (b), or (c) or this part shall be subject to a civil penalty of not more than the amount specified in section § 3.91(b)(1)(i)(A) of this title in the case of the first offense, and in the case of subsequent offenses, be subject to a civil penalty of not less than the amount specified in § 3.91(b)(1)(i)(B) of this title for each violation, except that the civil penalty shall be less than the amount specified in § 3.91(b)(1)(i)(B) of this title if the Administrator determines that the certified applicator made a good faith effort to comply with 7 U.S.C. 136i–1(a), (b), and (c) and this part.

#### PART 205—NATIONAL ORGANIC PROGRAM

■ 7. The authority citation for part 205 continues to read as follows:

**Authority:** 7 U.S.C. 6501–6522.

#### § 205.100 [Amended]

■ 8. Amend § 205.100(c)(1) by removing “\$10,000” and adding in its place “the amount specified in § 3.91(b)(1)(xxxvii) of this title”.

#### PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

■ 9. The authority citation for part 246 continues to read as follows:

**Authority:** 42 U.S.C. 1786.

#### § 246.12 [Amended]

■ 10. Amend § 246.12(l)(1)(x)(C) as follows:

■ a. Remove in the third sentence “shall be \$10,000.” and add in its place “shall be \$10,000, except for those violations listed in paragraph (l)(1)(i) of this section, where the civil money penalty shall be the maximum amount per violation specified in § 3.91(b)(3)(v) of this title for trafficking violations, or § 3.91(b)(3)(vi) of this title for selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments.”; and

■ b. Remove in the fifth sentence “may not exceed \$40,000.” and add in its place “may not exceed \$40,000, except for those violations listed in paragraph (l)(1)(i) of this section, where the total amount of civil money penalties may not exceed the maximum amount for violations occurring during a single investigation specified in § 3.91(b)(3)(v) of this title for trafficking violations, or § 3.91(b)(3)(vi) of this title for selling

firearms, ammunition, explosives, or controlled substances in exchange for food instruments.”.

#### PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

■ 11. The authority citation for part 278 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

#### § 278.6 [Amended]

■ 12. Amend § 278.6(j) as follows:

- a. Remove “\$20,000” and add in its place “the amount specified in § 3.91(b)(3)(ii) of this title;” and
- b. Remove “\$40,000” and add in its place “the amount specified in § 3.91(b)(3)(ii) of this title”.

#### PART 1150—DAIRY PROMOTION PROGRAM

■ 13. The authority citation for part 1150 continues to read as follows:

**Authority:** 7 U.S.C. 4501–4513.

#### § 1150.156 [Amended]

■ 14. Amend § 1150.156(b) by removing “\$1,000” and adding in its place “the amount specified in § 3.91(b)(1)(xx) of this title”.

#### PART 1160—FLUID MILK PROMOTION PROGRAM

■ 15. The authority citation for part 1160 continues to read as follows:

**Authority:** 7 U.S.C. 6401–6417.

#### § 1160.214 [Amended]

■ 16. Amend § 1160.214(b) as follows:

- a. Remove in the first sentence “not less than \$500 nor more than \$5,000 for each such violation” and add in its place “not less than nor more than the minimum and maximum amounts specified in § 3.91(b)(1)(xxxv) of this title for each such violation”; and
- b. Remove in the second sentence “not less than \$10,000 nor more than \$100,000 for each such violation” and add in its place “not less than nor more than the minimum and maximum amounts specified in § 3.91(b)(1)(xxxv) of this title for each such violation”.

Done at Washington, DC, this 11th day of May, 2005.

**Mike Johanns,**

*Secretary, U.S. Department of Agriculture.*

(For amendments to 7 CFR Part 3)

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

(For amendments to 7 CFR Parts 46, 110, 205, 1150, and 1160)

**Roberto Salazar,**

*Administrator, Food and Nutrition Service.*

(For amendments to 7 CFR Parts 246 and 278)

[FR Doc. 05–10153 Filed 5–23–05; 8:45 am]

**BILLING CODE 3410–01–P**

---

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. 04–065–1]

#### Tuberculosis; Reduction in Timeframe for Movement of Cattle and Bison From Modified Accredited and Accreditation Preparatory States or Zones Without an Individual Tuberculin Test

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

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

**SUMMARY:** We are amending the regulations concerning tuberculosis in cattle and bison by reducing, from 6 months to 60 days, the period following a whole herd test during which animals may be moved interstate from a modified accredited State or zone or from an accreditation preparatory State or zone without an individual tuberculin test. We have determined that the 6-month period during which individual tuberculin tests have not been required is too long given the risks of exposure to tuberculosis that exist in modified accredited and accreditation preparatory States or zones, especially in such States or zones where there are wildlife populations affected with tuberculosis. This interim rule will lower the potential risk of movement of infected animals and decrease the likelihood of tuberculosis transmission.

**DATES:** This interim rule is effective May 18, 2005. We will consider all comments that we receive on or before July 25, 2005.

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

- **EDOCKET:** Go to <http://www.epa.gov/fedocket> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 04-065-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 04-065-1.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

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

**Other Information:** You may view APHIS documents published in the **Federal Register** and related information on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael Dutcher, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD, 20737-1231, (301) 734-5467.

**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.

At the beginning of the last century, bovine tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine

Tuberculosis Eradication Program for bovine tuberculosis in livestock. Federal regulations implementing this 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), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of tuberculosis.

Under § 77.3 of the regulations, the Administrator of the Animal and Plant Health Inspection Service (APHIS) classifies each State or zone according to its level of occurrence of bovine tuberculosis. This classification system consists of five designations: Accredited free States or zones; modified accredited advanced States or zones; modified accredited States or zones; accreditation preparatory States or zones; and nonaccredited States or zones. A modified accredited State or zone is defined as a State or zone in which bovine 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 and which complies with the provisions of the UMR. At this time, Michigan is the only State with a zone designated as modified accredited for cattle and bison. An accreditation preparatory State or zone is defined as a State or zone in which bovine tuberculosis has been prevalent in less than 0.5 percent of the total number of herds of cattle and bison in the State or zone and which complies with the provisions of the UMR. At this time no States or zones are designated as accreditation preparatory for cattle and bison.

The regulations relating to bovine tuberculosis in cattle and bison have required, among other things, that cattle or bison that originate in a modified accredited State or zone or an accreditation preparatory State or zone and that are not known to be infected with or exposed to bovine tuberculosis be tested as a herd within 1 year prior to the date of movement. Sexually intact cattle or bison that 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 (WHT) conducted within 1 year prior to the date of movement are subject to an additional official tuberculin test that must be conducted on the individual animals of the herd within 60 days prior to the date of movement, unless the WHT was

performed less than 6 months prior to movement.

We have determined that the 6-month period during which individual tuberculin tests have not been required is too long given the risks of exposure to tuberculosis that exist in modified accredited and accreditation preparatory States or zones, especially in such States or zones where there are wildlife populations affected with tuberculosis. Therefore, in this interim rule we are amending the regulations in § 77.12 to state that, for cattle and bison moving from a modified accredited State or zone, individual bovine tuberculosis tests are required when the animals to be moved were included in a WHT and the WHT was conducted more than 60 days prior to the date of interstate movement. We are also amending the regulations in § 77.14 to state that for cattle and bison moving from an accreditation preparatory State or zone, individual bovine tuberculosis tests are required when the animals to be moved were included in a WHT and the WHT was conducted more than 60 days prior to the date of interstate movement. These changes will reduce by 4 months the period following a WHT during which cattle and bison may be moved interstate from a modified accredited State or zone or an accreditation preparatory State or zone without an individual tuberculin test.

**Immediate Action**

Immediate action is necessary to ensure that potentially exposed cattle and bison originating from modified accredited or accreditation preparatory States or zones are not moving out of the area as infected animals. The 6-month exemption time between a WHT and individual tuberculin testing is too long when considering the high potential for exposure to bovine tuberculosis from feral deer or other wildlife. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

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

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. 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.

This rule modifies the current exemption for bovine tuberculosis testing of individual animals moving from a modified accredited State or zone or from an accreditation preparatory State or zone following a WHT so that it is only applicable for 60 days rather than 6 months following the WHT. At this time, there are no accreditation preparatory States or zones, and the State of Michigan is the only State to contain a modified accredited zone for cattle and bison. The modified accredited zone of Michigan for cattle and bison includes: Alcona, Alpena, Antrim, Cheboygan, Charlevoix, Crawford, Emmet, Montmorency, Oscoda, Otsego, and Presque Isle Counties and portions of Ogemaw and Iosco Counties that are north of the southernmost boundaries of the Huron National Forest and Au Sable State Forest. The remainder of the State is classified as a modified accredited advanced zone. A modified accredited advanced State or zone is one that complies with the provisions of the UMR and in which bovine tuberculosis is prevalent in less than 0.01 percent of the total number of herds of cattle and bison for each of the most recent 2 years. Therefore, this rulemaking will primarily affect only those entities in counties in the modified accredited zone in Michigan with respect to both cattle and bison movement.

The 2002 Census of Agriculture for Michigan estimates that there are 14,495 farms with an inventory of 998,204 cattle and calves. According to the Census of Agriculture, a farm is any place from which \$1,000 or more of agricultural products were produced or sold, or normally would have been sold, during the census year. More recently, the 2004 Agricultural Statistics, which defines an operation or farm as any place having one or more head of cattle on hand at any time during the year, records approximately 15,000 cattle operations in Michigan, with an inventory totaling 990,000 head of cattle. Of these 15,000 operations, over 90 percent are considered small businesses. A small cattle operation is considered to be one having \$750,000 or less in annual receipts. The value per head of cattle in Michigan in 2003 was \$840, with a reported total cash value of \$831.6 million, according to the

National Agricultural Statistics Service. Nationally, the average value per head of cattle is \$728, which translates into a total value of cattle in the United States as \$69.9 billion.

In addition, 2002 census data for Michigan estimates that there were 162 farms with a total inventory of 4,057 bison. We believe it is safe to assume that the majority of these bison farms fall under Small Business Administration (SBA) definitions for a small entity. Consequently, this analysis of the economic effects of this interim rule is also sufficient for analyzing the small entity impact.

All or portions of 13 counties in Michigan are contained in the modified accredited zone. In this modified accredited zone, 2002 census data indicate that there are 1,292 farms with a combined inventory of 72,689 cattle and calves. Therefore, these 13 counties contribute about 7 percent to Michigan's statewide inventory of cattle and calves. Census data also show that there are 22 bison farms located within the modified accredited zone in Michigan; however, the exact number of farmed bison in these 13 counties and their corresponding contribution to the total State population of farmed bison is unknown.

As a result of the interim rule, producers in the modified accredited zone of Michigan will be subject to tighter interstate movement restrictions, thereby resulting in a corresponding increase in production expenses due to increasing compliance costs of moving and selling animals, including, but not limited to, labor, veterinary, and feeding expenses surrounding tuberculin testing for cattle and bison.

APHIS is currently in the process of researching the average cost to producers of identifying and testing for bovine tuberculosis and we welcome public comment on these costs with respect to cattle and bison. Preliminary research indicates the average cost of bovine tuberculin testing ranges from \$10 to \$12 per head. This interim rule reduces the period during which a WHT is sufficient for movement from a modified accredited State or zone by 4 months; therefore, producers will be required to perform an additional official tuberculin test on those animals they wish to move during this period and will incur increased expenses. These costs are not expected to be a significant economic burden to producers however, as even the \$12 per animal cost of testing only represents about 2 percent of the national per head value of cattle and 1.5 percent of Michigan's average per head value.

Moreover, in Michigan there is an intensive effort to eradicate bovine tuberculosis in livestock. Thus, the Michigan Department of Agriculture, along with APHIS, Michigan State University, and private veterinarians, has launched a statewide livestock testing program. Additionally, with the implementation of split-State status for Michigan, a new State rule was passed that provides producers in Michigan with one annual WHT paid for by the State; within 60 days of the test, they may freely move any of the tested animals. After the 60-day period has passed, producers in the modified accredited zone have the option of requesting either a State veterinarian or a private veterinarian, whose expenses will also be covered by the State, to test any individual animals the producer wishes to move. Producers can request this optional movement test at any time of the year, although it is expected most cattle and bison owners would request the test in the fall, when the majority of calves from the year are sold. Once this optional, State-subsidized test is performed, any additional testing for movement would then be done at the producer's expense.

In light of this testing program in Michigan, this interim rule will not pose any undue financial burden on producers located in the modified accredited zone. While we recognize this rule may have other, non-monetary effects in terms of inconvenience and tighter movement restrictions, we do not believe these impacts will be significant.

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

**Executive Order 12372**

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

**Executive Order 12988**

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

## Paperwork Reduction Act

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

### List of Subjects in 9 CFR Part 77

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

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

### PART 77—TUBERCULOSIS

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

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

#### § 77.12 [Amended]

■ 2. In § 77.12, paragraph (d) is amended by removing the words “6 months” and adding the words “60 days” in their place.

#### § 77.14 [Amended]

■ 3. In § 77.14, paragraph (d) is amended by removing the words “within 6 months” and adding the words “within 60 days” in their place.

Done in Washington, DC, this 18th day of May 2005.

**Elizabeth E. Gaston,**

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

[FR Doc. 05–10308 Filed 5–23–05; 8:45 am]

**BILLING CODE 3410–34–P**

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 230

[Regulation DD; Docket No. R–1197]

### Truth in Savings

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board is amending Regulation DD, which implements the Truth in Savings Act, and the staff commentary to the regulation, to address concerns about the uniformity and adequacy of information provided to consumers when they overdraw their deposit accounts. The amendments, in part, address certain types of services—sometimes referred to as “bounced-check protection” or—courtesy overdraft protection”—which are offered by many depository institutions to pay consumers’ checks, and which allow other overdrafts when there are

insufficient funds in the account. These services are typically automated services provided to transaction account consumers as an alternative to a traditional overdraft line of credit. Among other things, the final rule creates a new section to the regulation that requires institutions that promote the payment of overdrafts in an advertisement to disclose on periodic statements, total fees imposed for paying overdrafts and total fees imposed for returning items unpaid on periodic statements, both for the statement period and the calendar year to date, and to include certain other disclosures in advertisements of overdraft services.

**DATES:** The rule is effective July 1, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Elizabeth A. Eurgubian, Attorney, or Ky Tran-Trong or Krista P. DeLargy, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (“TDD”) only, contact (202) 263–4869.

#### SUPPLEMENTARY INFORMATION:

##### I. The Truth in Savings Act

The Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, is implemented by the Board’s Regulation DD (12 CFR part 230). The purpose of the act and regulation is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, the annual percentage yield (APY), the interest rate, and other account terms. An official staff commentary interprets the requirements of Regulation DD (12 CFR part 230 (Supp. I)). Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration.

Under TISA and Regulation DD, disclosures must be given upon a consumer’s request and before an account is opened. Institutions are not required to provide periodic statements, but if they do, the act requires that fees, yields, and other information be provided on the statements. Notice must be given to accountholders before an adverse change in account terms occurs and prior to the renewal of certificates of deposit (time accounts).

TISA and Regulation DD contain rules for advertising deposit accounts. Under TISA, there is a prohibition against advertisements, announcements, or solicitations that are inaccurate or misleading, or that misrepresent the deposit contract. Institutions also are prohibited from describing an account as free (or using words of similar meaning) if a regular service or

transaction fee is imposed, if a minimum balance must be maintained, or if a fee is imposed when a customer exceeds a specified number of transactions. In addition, the act and regulation impose substantive restrictions on institutions’ practices regarding the payment of interest on accounts and the calculation of account balances.

##### II. Concerns About Overdraft Services

Historically, depository institutions have used their discretion on an ad hoc basis to pay overdrafts for consumers on transaction accounts, usually imposing a fee. Over the years, some institutions automated the process for considering whether to honor overdrafts to reduce the costs of reviewing individual items, but generally institutions did not inform customers of their internal policies for determining whether an item would be paid or returned. More recently, third-party vendors have developed and sold overdraft programs to institutions, particularly to smaller institutions. These programs generally build upon or add to the institution’s existing internal reporting systems to enable the institution to automate its payment of overdrafts.<sup>1</sup> What generally distinguishes the vendor programs from institutions’ in-house automated processes is the addition of marketing plans that appear designed to promote the generation of fee income by disclosing to account-holders the dollar amount that the consumer typically will be allowed to overdraw their accounts. Some institutions also encourage consumers to use the service to meet short-term borrowing needs.

Paying consumers’ occasional or inadvertent overdrafts is a long-established customer service provided by depository institutions. The Board recognized this longstanding practice when it initially adopted Regulation Z in 1969, to implement the Truth in Lending Act (TILA); the regulation provided that these transactions are generally exempt from coverage under Regulation Z where there is no written agreement between the consumer and institution to pay an overdraft and impose a fee. *See* § 226.4(c)(3). The exemption from Regulation Z was designed to facilitate depository institutions’ ability to accommodate consumers on an ad-hoc basis.

<sup>1</sup> The Board’s proposal referred to “bounced-check protection” services. These services also are sometimes referred to as “courtesy overdraft protection.” Because some institutions’ overdraft services apply to non-check transactions, for clarity the services are referred to generically as “overdraft services.”