

accredited-free States in § 77.7 and adding it to the list of modified accredited advanced States in § 77.9.

Comments on the interim rule were required to be received on or before June 24, 2003. We received three comments by that date. They were from a State agricultural agency and two cattle industry groups. The comments are discussed below by topic.

Tuberculosis Classification

Under the regulations in § 77.7(c), if two or more tuberculosis-affected herds are detected in an accredited-free State or zone within a 48-month period, that State or zone will be removed from the list of accredited-free States or zones and will be reclassified as modified accredited advanced. All three commenters stated that a classification system based solely on an absolute number of affected herds does not sufficiently take into consideration State tuberculosis mitigation and eradication efforts. We recognize this issue and are currently preparing a proposed rule that will address this and other aspects of the regulations.

Delay in Compliance

In our interim rule, we delayed California's compliance date for certain identification requirements of the regulations for sexually intact heifers, steers, and spayed heifers moving interstate from California. We provided for this delay in recognition of the size and complexity of the cattle industry in California as well as in the interests of equitable treatment for producers in California since we had previously delayed the State of Texas's date of compliance with those requirements when we changed the classification of Texas from accredited-free to modified accredited advanced (*see* 67 FR 38841–38844, Docket No. 02–021–1, published June 6, 2002). The compliance date set in our April 2003 interim rule was September 30, 2003, the same compliance date given to the State of Texas. All three commenters stated that the time allotted for delay in compliance was too short. On August 8, 2003, we published a notice in the **Federal Register** (68 FR 47201–47202, Docket No. 03–072–1) further delaying the compliance date for both States until March 30, 2004.

Additionally, one commenter stated that, although the delay in compliance means that there are no Federally imposed identification requirements for certain animals moving interstate, many States have ignored the delay in compliance granted by the USDA. We are sensitive to this issue and have sought to avoid such situations by

holding meetings among State veterinarians and other officials in an effort to urge States to accept the Federal movement requirements.

Definitions

Among the requirements that we deferred as part of the delay in compliance discussed previously are the identification and certification requirements for sexually intact heifers found in § 77.10(d). In our April 2003 interim rule, we described the certification requirements as applying to “sexually intact heifers moving to unapproved feedlots.” One commenter stated that since the term “unapproved feedlot” is utilized but not defined in the regulations, this creates ambiguity and makes it more difficult to understand and uphold the delay in compliance. We apologize for any confusion our use of the term “unapproved feedlot,” which does not appear in the regulations, may have caused. In using the term, we were simply attempting to draw a distinction between the requirements at § 77.10(b), which covers, in part, the movement of sexually intact heifers to approved feedlots, and the requirements at § 77.10(d), which covers the movement of those and other animals to other destinations, which could include feedlots that are not approved feedlots.

Testing Costs

All three commenters expressed concern with the tuberculin testing cost estimates provided in the interim rule's economic analysis. One commenter stated that our determination that the identification requirements described would not have a significant impact on a substantial number of small entities was inaccurate. We are in the process of gathering data related to testing and testing costs in order to reevaluate our current information on those subjects. With regard to the determination of no significant impact on a substantial number of small entities, we consider “significant impact” to mean that the cost of a given action is equal to or greater than the small business's profit margin (5 to 10 percent of annual sales). By these standards, given the size and profitability of the cattle industry in California, this action does not represent a significant impact on a substantial number of small entities. A more detailed analysis of this issue can be found later in this document under the heading “Regulatory Flexibility Act.”

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations by removing California from the list of accredited-free States and adding it to the list of modified accredited advanced States.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

On January 1, 2002, there were approximately 22,000 cattle and bison operations in California, totaling 5.2 million head. According to the National Agricultural Statistics Service, the total cash value of cattle in California was over \$4.8 billion as of that year. Over 90 percent of California's cattle operations yield less than \$750,000 annually and are, therefore, considered small entities under criteria established by the Small Business Administration.

The interim rule changed the tuberculosis status of California from accredited-free to modified accredited advanced, resulting in interstate movement restrictions where none existed previously. Specifically, the regulations in § 77.10 require that, for movement to certain destinations, animals must test negative to an official tuberculin test and/or be officially identified by premises of origin identification before interstate movement is permitted.

The interim rule will prove beneficial by preventing the spread of tuberculosis to other areas of the United States. However, the stricter requirements for interstate movement will have an economic effect on those producers involved in the interstate movement of cattle and bison from California. As such, this analysis will focus on the expenses incurred by those producers engaged in interstate movement and in determining whether those negative impacts are significant.

The economic analysis prepared for the interim rule estimated the costs of tuberculin testing to be approximately \$3.76 per animal. However, according to the California Department of Food and Agriculture (CDFA), in conjunction with the California Cattleman's Association, the estimated costs of tuberculosis testing are actually between \$7.50 and \$10 per animal. Also, it is to be noted that the cost of the official identification and applicator is borne by the USDA,