

the herd have been exposed to tuberculosis by reason of association with tuberculous livestock, and those exotic bovidae or other species have not been destroyed. We are adding this paragraph to ensure that, when a cattle, bison, or cervid herd is depopulated, other exposed species do not remain to infect cattle, bison, or cervids with which the owner restocks the herd. We are including the provision that a designated epidemiologist must determine whether exposure had occurred, because there are situations where cattle, bison, cervids, antelope, and other livestock are maintained under common ownership, but the different species may be sufficiently separated so that they do not necessarily commingle. We are adding a definition for *designated epidemiologist* to § 50.1 to mean "an epidemiologist appointed by a cooperating State animal health official and the Veterinarian in Charge to perform functions specified by the 'Uniform Methods and Rules—Bovine Tuberculosis Eradication.'"

We are making several necessary changes to § 50.1, "Definitions," to make the definitions consistent with the other changes made in this rule. First, we are revising the definition of *herd*. According to the current definition, a herd consists of animals of like kind, or two or more groups of cattle or bison together. We are removing the "like kind" and "cattle and bison" provisions, and will state instead that a herd consists of any group of livestock maintained on common ground, 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.

We are removing the definition for *animals* from § 50.1, because adding the term *livestock* will eliminate the need to use the term and define animals. Throughout the regulations, we are removing the word "animal" wherever its meaning is not clear and replacing it with the specific kind of livestock (i.e. cattle, bison, cervid, or swine) that is appropriate to that section.

In the definitions for *approved herd plan* and *quarantined feedlot*, we are replacing "animals" with the term "livestock." In the definition for *owner*, we are replacing "cattle, bison, or swine" with the term "livestock." We are also including cervids in the definitions for *permit*, *reactor cattle and bison*, and *registered cattle and bison*. (The current definition for *reactor cattle and bison* states that cattle and bison are classified as reactors in accordance with the "Uniform Methods and Rules—

Bovine Tuberculosis Eradication," based on a positive response to an official tuberculosis test. As stated earlier in this document, the tuberculin tests approved in the Uniform Methods and Rules to detect TB in cattle and bison have also proven effective in determining the tuberculosis status of cervids. Additionally, the Animal and Plant Health Inspection Service is in the process of adding cervids to the provisions in the Uniform Methods and Rules.)

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to help prevent the spread of tuberculosis in cattle, bison, and cervid herds. We are currently aware of three herds of cattle and bison exposed to tuberculous cervids and six herds of cervids affected with bovine tuberculosis. The lack of Federal compensation for the destruction of these animals has resulted in these herds not being depopulated, allowing the tuberculosis to persist. These herds could spread the disease to healthy herds. Providing indemnity payments immediately will encourage owners to depopulate the tuberculous herds, thereby helping prevent the spread of tuberculosis to healthy herds and reducing the time required to achieve the eradication of bovine tuberculosis from the United States. Immediate action will, we believe, substantially advance our eradication efforts and enhance our ability to achieve the program's objectives.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

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.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this interim rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this rule.

In accordance with 21 U.S.C. 114a, as amended, the Secretary of Agriculture is authorized to promulgate regulations to provide for the payment of claims for compensation for animals destroyed because of tuberculosis. This rule provides for the payment of indemnity for the destruction of tuberculous reactor cervids, and for the destruction of cattle, bison, and cervids found to have been exposed to tuberculosis by reason of association with any tuberculous livestock. This rule is necessary to encourage owners to rapidly remove cattle, bison, and cervids affected with and exposed to tuberculosis from their herds, thereby facilitating tuberculosis eradication efforts in the United States.

Cervid producers affected by this rule would be primarily producers of deer and elk. There are approximately 1,000 deer producers and 950 elk producers in the United States, raising about 100,000 deer and 35,000 elk under controlled farm conditions. Holdings vary in size and degree of commercialization, but almost all deer and elk producers can be classified as small businesses (defined by the Small Business Administration as having less than \$0.5 million annual gross receipts). However, many producers rely on other sources of income (such as dairy farming or beef cattle ranching) for their livelihoods.

In general, elk producers concentrate on building up their herds, with most newborns retained as breeding stock. However, a fair market value for a heifer elk is between \$4,000 and \$5,000. Annual income is earned from the sale of antlers cut in the velvet stage of growth. The antlers sell for about \$65 per pound, and a single bull elk can produce an average of 18 pounds of antlers per year, for more than 10 years. Thus, a gross income of \$1,000 or more can be derived per year from a bull elk.

The value per animal is lower for deer than for elk, and varies by species. Currently, at private sales, prices for good quality fallow does and bucks range between \$500 and \$1,000. Young