

BILLING CODE: 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 53

[Docket No. APHIS-2015-0061]

RIN 0579-AE14

Conditions for Payment of Highly Pathogenic Avian Influenza Indemnity Claims

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations pertaining to certain diseases of livestock and poultry to specify conditions for payment of indemnity claims for highly pathogenic avian influenza (HPAI). Specifically, we are providing a formula that will allow us to split such payments between poultry and egg owners and parties with which the owners enter into contracts to raise or care for the eggs or poultry based on the proportion of the production cycle completed. This action is necessary to ensure that all contractors are compensated appropriately. We are also providing for the payment of indemnity for eggs required to be destroyed due to HPAI, thus clarifying an existing policy. Finally, we are requiring owners and contractors, unless specifically exempted, to provide a statement that at the time of detection of HPAI in their facilities, they had in place and were following a biosecurity plan aimed at keeping HPAI from spreading to commercial premises.

DATES: This interim rule is effective [Insert date of publication in the Federal Register]. We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0061>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2015-0061, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0061> or in our reading room, which 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) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Troy Bigelow, Senior Staff Veterinarian, Surveillance, Preparedness and Response Services; VS, APHIS, Federal Building, Room 891, 210 Walnut Street, Des Moines, IA 50309; (515) 284-4121.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA or the Department) administers regulations at 9 CFR part 53 (referred to below as the regulations) that provide for the payment of indemnity to owners of

animals that are required to be destroyed because of foot-and-mouth disease, pleuropneumonia, rinderpest, Newcastle disease, highly pathogenic avian influenza (HPAI), infectious salmon anemia, or any other communicable disease of livestock or poultry that, in the opinion of the Secretary of Agriculture, constitutes an emergency and threatens the U.S. livestock or poultry population. Payment for animals destroyed is based on the fair market value of the animals at the time of their destruction.

Section 53.2 of the regulations authorizes the APHIS Administrator to cooperate with a State in the control and eradication of disease. Paragraph (b) of this section allows for the payment of indemnity to cover the costs for purchase, destruction, and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to such disease.

Section 53.3 provides for the appraisal of such animals and materials. Paragraph (a) of § 53.3 states that the appraisals shall be carried out by an APHIS employee and a representative of the State jointly, or, if the State authorities approve, by an APHIS employee alone. Under § 53.3(b), the appraisal must be based on the fair market value and shall be determined by the meat, egg production, dairy, or breeding value of such animals.

Section 53.10 provides conditions under which payments will not be made on indemnity claims. Such conditions include, but are not limited to, noncompliance by the claimant with all quarantine requirements, as well the violation of laws, regulations, or cooperative agreements pertaining to movement or handling of animals by the animals' owner or employee or agent. Payments will also be disallowed for claims arising out of the destruction of animals or materials if those animals and materials have not been appraised in accordance with part 53 or if the owner has not executed a written agreement to the appraisals.

Highly Pathogenic Avian Influenza

There are many strains of avian influenza (AI) virus that can cause varying degrees of clinical illness in poultry. AI viruses can infect chickens, turkeys, pheasants, quail, ducks, geese, and guinea fowl, as well as a wide variety of other birds. AI viruses can be classified as highly pathogenic or low pathogenic (LPAI) strains based on the severity of the illness they cause.

HPAI is an extremely infectious and fatal form of the disease that, once established, can spread rapidly from flock to flock. Certain strains of AI have the potential to affect humans.

The U.S. poultry industry recently experienced a severe outbreak of HPAI. The outbreak was discovered in December 2014 in backyard flocks in the Pacific Northwest, and in two commercial turkey and chicken flocks in California. As of August 2015, 21 States had had HPAI detections in backyard flocks, commercial premises, captive wild birds, and/or wild birds. Established U.S. animal health policy is to eliminate notifiable AI virus (both HPAI and LPAI strains), when it is found, through depopulation (i.e., destruction and disposal) of affected poultry. APHIS, State, and local animal health officials euthanize poultry, clean and disinfect premises and equipment, and then test for elimination of the virus to ensure that farms can be safely restocked.

Payment of Indemnity

During the 2014-2015 outbreak, APHIS has been paying the full indemnity amount to the birds' owners—usually the poultry company—with the understanding that parties that have entered into contracts with the owners to grow or care for the animals would then be paid by the owner in accordance with contractual agreements. During the course of addressing the current 2015 outbreak, we determined that the existing regulations in part 53 do not specify that the indemnity

be split between owners and contractors. Since both owners and contractors incur losses when a flock is depopulated, both should be compensated appropriately.

A similar gap in the regulations concerning the payment of indemnity for LPAI became an issue for APHIS during an outbreak of LPAI in Virginia in 2002. In an interim rule published in the Federal Register on November 4, 2002, and effective December 9, 2002 (67 FR 67089-67096, Docket No. 02-048-1), we amended the regulations to allow the Department to pay indemnity to both contract growers and owners for poultry destroyed because of LPAI. That interim rule was followed by a final rule that provided for LPAI indemnity payments to owners and contractors.

Following approval by delegates during the 2004 National Poultry Improvement Plan (NPIP) Conference, APHIS amended the regulations via an interim rule¹ effective and published in the Federal Register on September 26, 2006 (71 FR 56302-56333, Docket No. APHIS-2005-0109), to establish a voluntary control program for the H5/H7 subtypes of LPAI under the auspices of the NPIP. Among other things, that interim rule established a new 9 CFR part 56 to provide for the payment of indemnity for costs associated with the eradication of H5/H7 LPAI.

First established under that interim rule, § 56.8 contains conditions for payments to flock owners and parties with which the owners contracted to grow and care for poultry and eggs. The section provides a formula for the distribution by APHIS of LPAI indemnity payments between owners and contractors.

Due to the absence, noted above, of a provision in part 53 for split indemnity payments prior to this interim rule, there was the possibility of contractors not being compensated for losses incurred as a result of our HPAI control efforts during the 2014-2015 outbreak. APHIS

¹ To view the interim rule and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2005-0109>.

believes it is important to ensure that all participants in the poultry industry with a stake in the continued health of the U.S. poultry stock are compensated for costs associated with eradication of HPAI, as well as LPAI. In this interim rule, therefore, we are incorporating into the HPAI regulations in part 53 conditions from the LPAI regulations in § 56.8 for the splitting of indemnity payments between owners and contractors. Only those conditions that are applicable to HPAI will be incorporated into part 53. These conditions are contained in a new § 53.11, titled “Highly pathogenic avian influenza; conditions for payment.” Some of the text in the new section that has been drawn from § 56.8 has been edited slightly for clarity.

Paragraph (a) of 53.11 provides a formula to enable the Administrator to determine the share of the indemnity payment that should be disbursed to the contractor. This is a two-step process. The dollar value of the contract the owner entered into with the contractor will be divided by the duration of the contract in days as it was signed prior to the HPAI outbreak. The resulting figure will then be multiplied by the time in days between the date the contractor began to provide services relating to the destroyed poultry or eggs under the contract and the date the poultry or eggs were destroyed.

Paragraph (b) states that if a contractor has received any payment under his or her contract from the owner of the poultry or eggs at the time the poultry or eggs are destroyed, the amount of indemnity from APHIS for which the contractor will be eligible will be reduced by the amount of the payment the contractor has already received from the owner. This provision will ensure that contractors will not receive indemnity payments that exceed the fair market value of the poultry or eggs.

Under § 53.11(c), if indemnity is paid to a contractor, the owner of the poultry or eggs will be eligible to receive the difference between the indemnity paid to the contractor and the

total amount of indemnity that may be paid for the poultry or eggs. This provision ensures that the owner will receive a fair share of the indemnity.

Finally, § 53.11(d) states that if the Administrator determines that the method described in § 53.11(a) for determining the amount of indemnity to be paid to a contractor, proves to be impractical or inappropriate in a particular case, APHIS may use any other method that the Administrator deems appropriate to determine the amount of indemnity due a contractor. This paragraph provides the Administrator with the flexibility to distribute indemnity payments equitably between owner and contractor in unusual or especially complex cases.

The above-listed conditions will allow contractors, as well as poultry and egg owners, to be compensated for economic losses suffered due to the destruction of poultry and eggs resulting from HPAI outbreaks.

Prior to this interim rule, the regulations in part 53 covered the destruction and indemnification of eggs under the general term “materials.” APHIS has covered eggs as being materials. To provide greater clarity, we are adding references to eggs to § 53.2(b), § 53.3(a), § 53.9, and § 53.10(c) and (d).

We are also adding a new paragraph (e) to § 53.3, pertaining to the appraisal of the value of eggs destroyed due to HPAI. As is the case for the animals themselves, under § 53.3(e), indemnity payments for eggs required to be destroyed due to HPAI will be based on the fair market value of the eggs, as determined by an appraisal. Appraisals will be reported on forms furnished by APHIS. The amount of indemnity paid, together with the amount for net salvage the owner or contractor received, if any, may not exceed the appraised fair market value of the eggs. Salvage refers to any payment the owner or contractor may receive from a third party, such as a breaker facility for the eggs. Such facilities may purchase the eggs and then pasteurize

them to kill the HPAI virus, so that the eggs can be used in food products. APHIS will subtract the amount of any such payments made to the owners or contractors from the indemnity amount paid out by APHIS.

In addition, because § 53.4 has not specifically provided for the destruction of eggs pursuant to the eradication of HPAI, we are adding a new paragraph (b) (currently reserved) to that section. The paragraph states that eggs infected with, exposed to, or contaminated by HPAI shall be disposed of pursuant to the regulations in part 53 under the supervision of an APHIS employee who shall prepare and transmit to the Administrator a report identifying all eggs disposed thereof.

Biosecurity

In some instances during the 2014-2015 outbreak, poor biosecurity practices may have led to HPAI introduction or spread within and among some commercial poultry facilities. More specifically, as discussed in our July 2015 report on HPAI-infected flocks (https://www.aphis.usda.gov/animal_health/animal_dis_spec/poultry/downloads/Epidemiologic-Analysis-June-15-2015.pdf), the existing level of biosecurity appears to have failed to protect layer and turkey facilities in the upper Midwest from HPAI. In our view, the biosecurity of layer, turkey, and broiler facilities needs to be enhanced to avoid future catastrophic outbreaks of HPAI.

As a step toward achieving the goal of enhancing biosecurity, this interim rule requires both owners of poultry or eggs and contractors to provide to APHIS a statement that at the time of detection of HPAI in their facilities, they had in place and were following a biosecurity plan. Indemnity claims will be denied if the owner or contractor, unless exempted, does not provide

such a statement. This requirement will be placed in a new paragraph (g) to be added to § 53.10, the section in part 53 that covers claims not allowed

Paragraph (g)(1) contains a list of several measures that a biosecurity plan should include in order to be effective at preventing the introduction of HPAI to a poultry facility. First, personnel working at such a facility should be given appropriate biosecurity training and should be subject to certain biosecurity requirements, e.g., showering and changing upon, or prior to arriving at, the facility. The biosecurity plan should also include measures to prevent HPAI introduction via vehicles and equipment. A “line of separation” should be maintained, beyond which nothing should cross that could introduce the virus to poultry houses. Measures to control wild birds, rodents, and insects should be implemented, and the facility should have a source of clean water. More detailed information regarding these biosecurity measures for poultry facilities can be found at <https://iastate.app.box.com/Biosec-Officer-Info-Manual>. Educational and training materials for poultry-industry personnel are available at <http://www.poultrybiosecurity.org/>.

The inclusion of the measures discussed above in an HPAI biosecurity plan is supported by the findings of our September 2015 report on HPAI-infected flocks (https://www.aphis.usda.gov/animal_health/animal_dis_spec/poultry/downloads/Epidemiologic-Analysis-September2015.pdf). For example, in that report, statistical evidence was found that having visitors follow biosecurity protocols, such as changing clothes before entering a barn, and having premises personnel disinfect barn entry areas were both associated with a lowered risk of introducing HPAI to the premises.

Under paragraph (g)(2), owners and contractors will be exempted from the requirement to submit a biosecurity statement if their facilities fall under one of the following categories:

Premises covered under the NPIP regulations in 9 CFR 146.22(b) (commercial table-egg laying premises with fewer than 75,000 birds) or § 146.52(b) (raised for release upland game bird and waterfowl premises that raise fewer than 25,000 birds annually) and premises where fewer than 100,000 broilers or 30,000 turkeys are raised for meat annually. Exempting such facilities will allow APHIS to concentrate on helping large commercial facilities with their biosecurity activities. These larger operations were hardest hit by the 2015 outbreak, and are in the best position to address biosecurity issues. More than 99 percent of broilers are raised on farms with more than 100,000 birds, and 97 percent of turkeys are raised on farms with more than 30,000 birds. In addition, the smaller facilities that we are exempting from the requirement are less likely to have HPAI outbreaks than are the non-exempt ones. On smaller facilities, birds density tends to be less which minimizes overall viral load. Additionally, if a smaller facility was identified with HPAI the disease is less likely to spread outward to other premises because there are fewer birds, vehicles, pieces of equipment, and employees moving onto and off of the smaller, exempted facilities when compared to the larger, non-exempted ones.

To facilitate owners' and contractors' biosecurity planning, APHIS has created and distributed biosecurity training materials, which include specific examples of approaches to developing and implementing biosecurity protocols for the various types of commercial poultry operations. Further, we are increasing outreach to all producers—large, small and backyard—to educate them about biosecurity plans and how they can be implemented at the local level.

APHIS is phasing in implementation and documentation of enhanced biosecurity through a biosecurity self-assessment. Initially, commercial poultry owners and contractors will be asked to voluntarily self-assess, whether their operations have implemented the measures in a general biosecurity checklist developed by APHIS

(http://www.uspoultry.org/animal_husbandry/assessment.cfm). Next, each owner and/or contractor should develop a risk-based, site-specific biosecurity plan that includes standard operating procedures and a site-specific checklist. This step will be followed by the development of a plan for Federal, State, or industry-led oversight of the biosecurity plan and a mechanism for verification. We welcome comments from the public regarding the development of procedures for the oversight and verification of the biosecurity plan.

Miscellaneous

In addition to adding the references to eggs to § 53.2(b), we are making a couple of minor edits to the paragraph for the sake of clarity. We are incorporating footnote 1 into the text and editing one clause of the paragraph that, as written, could be interpreted as referring to the ineligibility of the animals covered by the paragraph, rather than their owners, to receive indemnity payments. The clause has been revised for accuracy, and we have also added a reference to contractors, in keeping with the other changes we are making to part 53.

Emergency Action

This rulemaking is necessary on an emergency basis to provide timely and equitable compensation to owners and contractors for flocks destroyed due to the disease, which may reoccur in 2016. 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 rule effective less than 30 days after publication in the Federal Register.

We will consider comments we receive during the comment period for this interim rule (see DATES above). After the comment period closes, we will publish another document in the

Federal Register. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This interim rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this interim rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides an initial regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. The full analysis may be viewed on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov) or obtained from the person listed under FOR FURTHER INFORMATION CONTACT.

APHIS is amending the regulations to include conditions for the splitting of HPAI indemnity payments when multiple parties are involved in order to ensure that all parties who suffer losses resulting from the destruction of poultry or eggs due to HPAI are compensated and compensation is distributed to parties who suffer losses based on the terms of the contract. The vast majority of contracts are expected to reflect the relative level of inputs or investments of the parties who suffer losses. This interim rule also clarifies that APHIS will pay indemnity for eggs

destroyed due to HPAI and requires owners and contractors, unless exempted because their facilities are small, to provide a statement that at the time of detection of HPAI in their facilities, they had in place and were following a written biosecurity plan to address the potential spread of HPAI.

The entities affected by this interim rule will be U.S. facilities primarily engaged in breeding, hatching, and raising poultry for meat or egg production, and facilities primarily engaged in slaughtering poultry. There were about 25,000 farms categorized as breeding, hatching, or raising poultry for meat production, about 28,000 farms categorized as egg producers, and 517 poultry processors in the 2012 Agricultural Census. In particular, this rule will affect poultry owners and contractors who produce poultry under production contracts. It is estimated that 97 percent of broilers were raised on production contract operations in 2011.² Of the farms producing broilers and other meat-type chickens, about 15,350 accounted for more than 99 percent of the total number of broilers sold in 2012 according to the Agricultural Census.

The United States is the world's largest poultry producer and the second-largest egg producer. The combined value of production from broilers, eggs, turkeys, and the value of sales from chickens in 2014 was \$48.3 billion, up 9 percent from \$44.4 billion in 2013. Of the combined total, 68 percent was from broilers, 21 percent from eggs, 11 percent from turkeys, and less than 1 percent from chickens.³ Broiler production, valued at over 50 billion pounds per year, is concentrated in a group of States stretching from Delaware, south along the Atlantic coast to Georgia, then westward through Alabama, Mississippi, and Arkansas. The U.S. turkey

² 2011 USDA Agricultural Resource Management Survey, Version 4.

³ USDA, NASS. Poultry Production and Value, 2014 Summary. April 2015.

industry produces over one-quarter of a billion birds annually. Production of turkeys is somewhat more scattered geographically than broiler production, with Minnesota, North Carolina, Missouri, Arkansas and Virginia the top five turkey-producing States. U.S. laying hen operations produce over 90 billion eggs annually. The top five egg-producing States are Iowa, Ohio, Pennsylvania, Indiana, and Texas.

In 2014, the United States exported nearly 4 million metric tons (MT) of poultry meat valued at about \$5 billion. The vast majority of exports consisted of chicken meat. Export demand for U.S. broiler products has fluctuated over the last several years because of changing economic conditions and currency exchange rates. Since the first HPAI findings in December 2014, a number of trading partners have imposed complete or partial bans on shipments of U.S. poultry and products.

Broilers account for nearly all U.S. chicken consumption. Broiler production and processing occurs within highly integrated production systems. Owners of the processing facilities own, as well, the birds that are processed and contract with growers (contractors) to raise those birds before processing. The top 20 owners together accounted for 94 percent of all broilers produced in the United States in 2012, and the top 3 accounted for 49 percent.

Expanded broiler production has been made possible to a large extent by the vertically integrated production system and through the use of production contracts. Almost all commercial operations raising broilers are contract growers.⁴

Under the system of production contracts, the contractor normally supplies the grow-out house with all the necessary heating, cooling, feeding, and watering systems. The contractor also supplies the labor needed in growing the birds. The owner normally supplies the chicks, feed,

⁴ MacDonald, J.M. Technology, Organization, and Financial Performance in U.S. Broiler Production, EIB-126 USDA Economic Research Service. June 2014.

veterinary medicines and transportation. Contractors have exclusive contracts with an owner and receive payment for the services that they provide, with premiums and discounts tied to the efficiency with which feed is converted to live-weight broilers, the minimization of mortality, or the number of eggs produced. Specific contract terms and the period covered can vary.

Embedded in the value of a bird at any point in time is the value of inputs by both parties. Contractors' costs are more or less fixed and are heavily committed early in the production cycle. Investments in poultry housing cannot be shifted readily to other farming activities.

Currently, indemnity payments go directly to the owner of the birds who, depending on the terms of the contractual arrangement, might or might not compensate the contractor. It is important to formalize provisions to share indemnity payments between poultry owners and contractors, both of whom have productive assets imbedded in the value of the bird. When USDA pays to compensate owners and contractors for losses, that compensation should be distributed to parties who suffer losses based on the terms of the contract.

APHIS' determination of the total amount of indemnity will remain the same under the interim rule as at present, based on the appraised value of the bird or eggs, the number of birds depopulated or eggs destroyed, and the age of the birds when depopulated. However, to determine the appropriate payment split between owner and contractor, APHIS may have to examine contract specifics on a case-by-case basis. This interim rule will not change the total amount of compensation paid in a given situation, but will ensure timely distribution of that compensation between the owner and contractor. This interim rule will benefit contractors who otherwise may suffer uncompensated economic losses from participating in an eradication program.

To date, the generic term “materials” within the existing regulations in part 53 has been used to provide for indemnification for eggs required to be destroyed pursuant to HPAI eradication efforts. This rule will specify appropriate references to eggs, and a description of the appraisal of the value of eggs destroyed due to HPAI to the regulations. The rule will therefore simply clarify existing practice for the indemnification of destroyed eggs and will not change the total amount of any compensation paid in a given future situation.

The vast majority of contractors have some level of biosecurity in place on their operations. This rule will require large owners and contractors to provide a statement that a written biosecurity plan was in place and was followed if HPAI is detected at their facilities. There are approximately 18,900 poultry operations that will be subject to this requirement. Many operations will need to review their existing biosecurity plans, and some will need to newly develop plans. We estimate that the development of a biosecurity plan could cost between about \$525 and \$700, while the review of an existing plan could cost about \$70. If 5 percent of producers need to newly develop biosecurity plans and 95 percent need to review existing biosecurity plans, the total one-time cost for all producers could be between \$1.7 million and \$1.9 million.

Most producers should be readily able to affirm that they were following a biosecurity plan in the case of an HPAI incident. We estimate that an owner or contractor will need at most about 0.25 to 0.50 hours to comply with this affirmation requirement, at a cost of \$8.73 to \$17.45 per occurrence. The total cost of this affirmation requirement will depend on the number of producers affected by a given HPAI outbreak who submit paperwork to receive indemnity. If a given outbreak were to affect 100 flocks, the total cost of this affirmation requirement would be

from about \$900 to \$1,800 and if a given outbreak were to affect 500 flocks, the total cost would be from about \$4,400 to \$8,800 when rounded up to the nearest hundred.⁵

It should be noted that these total cost estimates are limited to the cost of developing or reviewing biosecurity plans and providing a statement attesting that a biosecurity plan was in place and followed. Because this rule does not require the implementation of specific biosecurity measures, the costs associated with implementing new biosecurity measures are not included in these totals. We expect that most producers already have or will voluntarily adopt new biosecurity measures prior to the interim rule becoming effective.

APHIS is distributing biosecurity training materials that include specific examples of approaches to developing and implementing biosecurity protocols for various types of commercial poultry operations. APHIS is phasing in enhanced biosecurity initially through voluntary self-assessments. Results of self-assessments in the fall of 2015 show that a significant majority of poultry producers have in place or are in the process of implementing a variety of recommended biosecurity practices. Development, following public input, of Federal, State or industry-led oversight and verification will follow.

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 2 CFR chapter IV.)

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)

⁵ One hundred flocks * \$8.73 = \$873, 100 flocks * \$17.45 = \$1,745, 500 flocks * \$8.73 = \$4,365 and 500 flocks * \$17.45 = \$8,725.

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 section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the Federal Register providing notice of the assigned OMB control number.

Please send written comments on the information collection and recordkeeping requirements included in this interim rule to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. APHIS-2015-0061, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. APHIS-2015-0061 and send your comments within 60 days of publication of this rule.

This interim rule establishes regulations to provide for the equitable distribution of indemnity payment to owners and contractors by the Department for the depopulation of poultry and destruction of eggs known to be infected with HPAI and to require that, in order to receive indemnity payments, owners and contractors, unless specifically exempted, must submit a statement indicating that they had in place and were following a biosecurity plan at the time of HPAI detection in their facilities. In addition to submitting the biosecurity statement, owners and contractors must sign a payment, appraisal and agreement form and must certify as to

whether any other parties hold mortgages on the flock. This interim rule also clarifies that eggs are a commodity eligible for indemnity.

We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

- (1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.626 hours per response.

Respondents: States; Poultry and egg owners and contractors.

Estimated annual number of respondents: 35,925.

Estimated annual number of responses per respondent: 1.9336.

Estimated annual number of responses: 69,456

Estimated total annual burden on respondents: 112,950 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this interim rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

List of Subjects in 9 CFR Part 53

Animal diseases, Indemnity payments, Livestock, Poultry and poultry products.

Accordingly, we are amending 9 CFR part 53 as follows:

PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

1. The authority citation for part 53 continues to read as follows:

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

2. In § 53.2, paragraph (b) is revised to read as follows:

§ 53.2 Determination of existence of disease; agreements with States.

* * * * *

(b) Upon agreement of the authorities of the State to enforce quarantine restrictions and orders and directives properly issued in the control and eradication of such a disease, the Administrator is hereby authorized to agree, on the part of the Department, to cooperate with the State in the control and eradication of the disease, and to pay 50 percent (and in the case of

Newcastle disease or highly pathogenic avian influenza, up to 100 percent, and in the case of infectious salmon anemia, up to 60 percent) of the expenses of purchase, destruction and disposition of animals, eggs, and materials required to be destroyed because of being contaminated by or exposed to such disease: Provided, however, that if the animals or eggs were exposed to such disease prior to or during interstate movement and the owners or parties contracting with the owners to raise or care for the animals or eggs are not eligible to receive indemnity from any State, the Department may pay up to 100 percent of the purchase, destruction, and disposition of animals, eggs, and materials required to be destroyed; Provided further, that the cooperative program for the purchase, destruction, and disposition of birds shall be limited to birds which are identified in documentation pursuant to Agreements between the Department and the particular State involved relating to cooperative animal (including poultry) disease prevention, control, and eradication, as constituting a threat to the poultry industry of the United States; And provided further, that the Secretary may authorize other arrangements for the payment of such expenses upon finding that an extraordinary emergency exists.

3. Section § 53.3 is amended as follows:

- a. By revising the section heading.
- b. In paragraph (a), by adding the words “or eggs” after the word “Animals”.
- c. By adding paragraph (e).

The addition and revision read as follows:

§ 53.3 Appraisal of animals, eggs, or materials.

* * * * *

(e) Indemnity for eggs required to be destroyed due to an outbreak of highly pathogenic avian influenza will be based on the fair market value of the eggs, as determined by an appraisal.

Appraisals of eggs shall be reported on forms furnished by APHIS. The amount of indemnity paid, together with the amount for net salvage the owner or contractor received, if any, shall not exceed the appraised fair market value of the eggs.

4. Section 53.4 is amended as follows:

- a. By revising the section heading.
- b. By adding paragraph (b).

The addition and revision read as follows:

§ 53.4 Destruction of animals or eggs.

* * * * *

(b) Eggs infected with, exposed to, or contaminated by highly pathogenic avian influenza shall be disposed of pursuant to the regulations in this part under the supervision of an APHIS employee who shall prepare and transmit to the Administrator a report identifying all eggs disposed thereof.

* * * * *

5. Section 53.9 is amended as follows:

- a. The section heading is revised.
- b. By adding the word “, eggs,” after the word “animals” each time it appears.

The revision reads as follows:

§ 53.9 Mortgage against animals, eggs, or materials.

* * * * *

6. Section 53.10 is amended as follows:

- a. In paragraphs (c) and (d), by adding the word “, eggs,” after the word “animals” each time it appears.

b. By adding paragraph (g).

The addition reads as follows:

§ 53.10 Claims not allowed.

* * * * *

(g) The Department will not allow claims arising out of the destruction of animals or eggs destroyed due to an outbreak of highly pathogenic avian influenza unless the owner of the animals or eggs and any party that enters into a contract with the owners to grow or care for the poultry or eggs, unless exempted under paragraph (g)(2) of this section, provide to APHIS a statement that at the time of detection of highly pathogenic avian influenza in the facility, the owner and contractor (if applicable), had in place and was following a biosecurity plan.

(1) The biosecurity plan should include the following:

(i) A biosecurity training program for premises/farm personnel;

(ii) Biosecurity protocols for personnel;

(iii) Procedures to control wild birds, rodents, and insects to reduce the risk of introduction or spread of HPAI;

(iv) Measures taken to prevent HPAI introduction via vehicles and equipment;

(v) Maintenance of a line of separation; and

(vi) A clean water source for the facility.

(2) Owners and contractors are exempted from the requirements of paragraph (g)(1) of this section if the facilities where the animals or eggs are raised or cared for falls under one of the following categories:

(i) Premises meeting the criteria of the National Poultry Improvement Plan regulations in §§ 146.22(b) or 146.52(c) of this chapter;

- (ii) Premises on which fewer than 100,000 broilers are raised annually; and
- (iii) Premises on which fewer than 30,000 meat turkeys are raised annually.

* * * * *

7. Section 53.11 is added to read as follows:

§ 53.11 Highly pathogenic avian influenza; conditions for payment.

(a) When poultry or eggs have been destroyed pursuant to this part, the Administrator may pay claims to any party with whom the owner of the poultry or eggs has entered into a contract for the growing or care of the poultry or eggs. The indemnity the Administrator may pay to such a party or parties shall be determined as by the following method:

(1) Divide the value in dollars of the contract the owner entered into with the contractor by the duration in days of the contract as it was signed prior to the highly pathogenic avian influenza outbreak;

(2) Multiply this figure by the time in days between the date the contractor began to provide services relating to the destroyed poultry or eggs under the contract and the date the poultry or eggs were destroyed due to highly pathogenic avian influenza.

(b) If a contractor receiving indemnity under this section has received any payment under his or her contract from the owner of the poultry or eggs at the time the poultry or eggs are destroyed, the amount of indemnity for which the contractor is eligible will be reduced by the amount of the payment the contractor has already received.

(c) If indemnity is paid to a contractor under this section, the owner of the poultry or eggs will be eligible to receive the difference between the indemnity paid to the contractors and the total amount of indemnity that may be paid for the poultry or eggs.

(d) In the event that determination of indemnity due a contractor using the method described in paragraph (a) of this section is determined to be impractical or inappropriate, APHIS may use any other method that the Administrator deems appropriate to make that determination.

Done in Washington, DC, this 3rd day of February 2016.

Gary Woodward

Deputy Under Secretary for Marketing and Regulatory Programs