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DEPARTMENT OF AGRICULTURE

5 CFR Part 8301

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture; Correction

AGENCY: Department of Agriculture (USDA).

ACTION: Final rule; correction.

SUMMARY: In this document, the Department of Agriculture, with the concurrence of the Office of Government Ethics (OGE), is correcting a typographical error in one of the amendatory instructions of the final rule amendments to the supplemental standards of ethical conduct for USDA employees, which was published by the USDA in the **Federal Register** on Monday, September 16, 2002 (67 FR 58319).

EFFECTIVE DATE: September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Raymond J. Sheehan, Director, Office of Ethics, U.S. Department of Agriculture, Room 348–W–Stop 0122, 1400 Independence Avenue, SW., Washington, DC 20250–0122, telephone: (202) 720–2251.

SUPPLEMENTARY INFORMATION: In the above-noted final rule amendments document published by the USDA, with OGE concurrence, the beginning of amendatory instruction 2.e. inadvertently omitted the words ''Removing the'' before the paragraph reference identified therein which was being replaced by a redesignated paragraph reference. This document corrects the error in amendatory instruction 2.e.

Dated: October 15, 2002.

John S. Surina,

Designated Agency Ethics Official, U.S. Department of Agriculture.

Approved: October 28, 2002.

Stuart D. Rick,

Deputy General Counsel, Office of Government Ethics.

For the reasons set forth in the preamble, the Department of Agriculture, with the concurrence of the Office of Government Ethics, is correcting the September 16, 2002, publication of the final rule amendments on Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture, which was the subject of FR Doc. 02–23489, as follows:

PART 8301—[CORRECTED]

§ 8301.103 [Corrected]

On page 58319, in the third column, the beginning of the first line of amendatory instruction 2.e., is corrected by removing the word ''Paragraph'' and adding in this place the words ''Removing the paragraph''.

[FR Doc. 02–27989 Filed 11–1–02; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 53

[Docket No. 02–048–1]

RIN 0579–AB46

Low Pathogenic Avian Influenza; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending our general indemnity regulations to allow the Department to pay indemnity to contract growers and owners for poultry destroyed because of low pathogenic avian influenza associated with a disease situation in Virginia. Subject to available funding, the Department may pay all eligible losses of contract growers and up to 50 percent of eligible losses of owners, minus any amount paid to the contract grower of a flock. However, total payments may not exceed 50 percent of all eligible costs. Additionally, we are providing that the value of poultry destroyed due to the disease may be determined after destruction and disposal of the poultry, and, except in limited situations, are requiring a waiting period of 7 days following cleaning and disinfection before premises that contained poultry affected by the disease may be restocked. These actions are necessary to help control this disease in the United States.

DATES: This interim rule is effective December 9, 2002. We will consider all comments that we receive by December 4, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–048–1, 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. 02–048–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–048–1'' on the subject line.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Cheryl Hall, Staff Veterinarian, Planning, Certification, and Monitoring Staff, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–4924.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (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, exotic Newcastle disease, highly pathogenic avian influenza, 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 to be based on the fair market value of the animals.

Payment of Indemnity

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. In the case of low pathogenic avian influenza (LPAI), the Administrator may pay up to 50 percent of the costs.

Low Pathogenic Avian Influenza

Avian influenza (AI) viruses are classified into 15 subtypes based on their surface hemagglutinin (H) proteins. LPAI viruses constitute the vast majority of AI viruses and cause few clinical signs in infected birds. However, LPAI H5 and H7 viruses can mutate into highly pathogenic forms under field conditions.

Highly pathogenic AI (HPAI) is not known to exist in the United States. It is an extremely infectious and deadly form of the disease and can cause sudden death in poultry without any warning signs of infection. Recently, a subtype of the H7 virus, the H7N2 strain, was determined to be present in commercial poultry flocks in the State of Virginia. (To date, no poultry infected with the H5 virus have been found in Virginia.) Because of the possibility that LPAI H5 and H7 viruses could mutate into HPAI, we have determined that it is necessary to eliminate these specific viruses if they occur in poultry in relation to the disease situation occurring in Virginia.

Agricultural authorities in Virginia have taken action to control the disease through diagnostic activities, quarantines, surveillance, depopulation and disposal of infected and exposed poultry, and cleaning and disinfection or disposal of contaminated materials. To protect the poultry industry in the United States, APHIS is cooperating with Virginia in its control measures. Integral to these efforts is the destruction of all poultry known to be infected with or exposed to the disease.

Payment for Losses

In reviewing the regulations in § 53.2 regarding authorization of payments by the Department for losses growing out of the destruction of animals affected with the disease, we found the wording too narrow to cover costs borne by contract growers of poultry, who do not own the birds, but who nonetheless would suffer losses associated with their destruction. Therefore, we are adding a new § 53.11(a) to the regulations, in which we provide that, subject to available funding, in the case of the current disease situation in Virginia associated with the H5 or H7 virus, the Administrator may pay claims of up to 100 percent of eligible losses incurred by each contract grower resulting from the destruction of poultry affected with the disease, up to the amount that the owner of the poultry is eligible to receive before grower compensation is deducted, as discussed below.

We are also adding a new § 53.11(b) to provide that, in the case of the current LPAI situation in Virginia, the Administrator may pay up to 50 percent of all eligible losses incurred by each owner resulting from the destruction of poultry affected with the disease, minus any amount APHIS pays to the contract grower of the poultry under § 53.11(a). A copy of the LPAI compensation plan is available for review at the location listed in the **ADDRESSES** section at the beginning of this document and at *http://www.aphis.usda.gov/ppd/rad/avianecon.pdf*. Compensation will be made only for poultry destroyed and the costs of destruction and disposal, and not for materials.

Method of Calculating Compensation

Under the LPAI compensation plan, the total per bird compensation value is determined first. Compensation for growers is determined next, with the amount per bird based on the payments that growers have earned in previous production cycles. Once the amount to be paid to growers is arrived at, that amount is subtracted from the total compensation value to determine what owners will receive.

(Compensation will not be paid for meat birds sent to slaughter. For breeder or table egg layer birds, the amount of compensation paid will be reduced by any salvage value of the birds.)

In general, the compensation plan will be applied according to the following formulas:

1. Compensation to Contract Growers

Per bird payment based on the average per bird company grower payment received during the previous year's production
× the number of birds depopulated (based on company and grower records)
= estimated grower payment if the disease situation hadn't occurred
− any company grower payment already received
= grower compensation

The compensation plan for growers allows for Federal payment of 100 percent of eligible losses suffered by a grower, up to the amount that the owner of the poultry is eligible to receive before grower compensation is deducted. In all cases, 100 percent of eligible grower losses will be less than 50 percent of the value of the birds.

By targeting growers for indemnities, the Federal Government enhances the probability of rapid reporting by growers who are in a position to quickly report a disease situation. This enhances the likelihood of prompt eradication. In addition, such payments will benefit poultry growers who could otherwise suffer uncompensated economic losses from participating in an eradication program. If growers are not compensated, any sunk mortgage, electricity, or labor costs a grower has invested in a flock are lost when the flock is depopulated. Some of these costs, such as mortgage costs, continue even if there are no poultry on the grower's premises.

2. Compensation to Owners

Compensation value per bird (based on tables included in the compensation plan)
× the number of birds depopulated
= the total bird value loss
+ cost to owners of destruction and disposal of birds
× 50 percent
= total compensation for birds, destruction, and disposal
− grower compensation
= net owner compensation from the Department

Depopulation Agreement

We are providing in new § 53.11(c) that payments are conditioned on each claimant's complying with all applicable requirements of part 53 and, additionally, adhering to and complying with the specific conditions set forth in the ''Avian Influenza Depopulation Agreement'' regarding cleaning and disinfection, restocking, surveillance, and other disease prevention measures.

We will consider affected poultry to be related to the current disease situation in Virginia if they are located in Virginia or if they are poultry in another State that are determined to be affected with LPAI because of being epidemiologically linked to the disease situation in Virginia.

Owners who collect salvage value for poultry destroyed because of LPAI will have that value subtracted from the amount of indemnity they are eligible to receive.

Determining the Value of Poultry Destroyed

Prior to this interim rule, § 53.4 provided, among other things, that poultry affected by disease must be killed promptly after appraisal. However, in the case of a disease such as LPAI that can spread rapidly among poultry in close proximity, it may be necessary in controlling the disease to destroy poultry before determining its value. Therefore, we are providing in a new § 53.4(b) that, in the case of the current disease situation in Virginia, the value of poultry may be calculated following destruction and disposal of the poultry, based on the number, type, and age of the poultry destroyed.

We are providing in § 53.8 that any claims for payment for poultry destroyed in relation to the current disease situation in Virginia must be submitted to APHIS within 90 days after the effective date of this rule or the destruction of the poultry, whichever is later. Additionally, we are revising § 53.8 to provide that claims for payment must simply be made on a form approved by the Administrator, and remove the requirement that a separate voucher be used for each type of commodity for which a claim is made. In the case of the disease situation in Virginia, compensation will be made for the poultry and for the costs of destruction and disposal of the poultry. In all other cases, the claim form approved by the Administrator can be used for claims for other eligible losses.

The Administration is examining how the costs of program activities, including the payment of claims, are shared among the Federal government and cooperators such as State and local governments, industry, and producers. Hence, in the future, the payment rate provided under this rule may change.

Restocking of Premises

We are providing in § 53.7 that, in the case of LPAI related to the current disease situation in Virginia, premises that have contained poultry for which indemnity is paid under the provisions of this interim rule may not be restocked with poultry until at least 7 days following cleaning and disinfection of the premises, unless the Administrator determines that a shorter or longer period of time is adequate or necessary to protect new poultry against infection. Generally, we consider 7 days following cleaning and disinfection (which usually follows approximately 14 days after the removal of the poultry) to be a sufficient period of time for the elimination of any LPAI virus that might remain on the premises. However, in some cases it is possible it might not be entirely safe to restock a premises until more than 7 days following cleaning and disinfection, such as when poultry have not yet been removed from a premises contiguous to the premises that has been cleaned and disinfected, or when poultry litter is left in a barn that has been otherwise cleaned and disinfected. In such cases, an APHIS official will recommend to the Administrator that more than 7 days be required before restocking may occur. If on the other hand, owners or growers can demonstrate to the Administrator that less than a 7-day waiting period following cleaning and disinfection is sufficient to ensure that the virus has been eliminated, this interim rule allows the Administrator to approve such a shorter period.

Immediate Action

The Administrator has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. This rulemaking is necessary to allow contract growers, as well as owners, of poultry destroyed because of LPAI associated with a disease situation in Virginia to be compensated. The rulemaking is also necessary to allow the value of the poultry to be determined after destruction, and to specify how soon a premises that contained affected poultry may be restocked. These provisions are necessary to help control the disease in the United States.

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 Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The 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.

Below is a summary of the economic analysis for the changes in indemnity with regard to low pathogenic avian influenza in Virginia contained in this document. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act. A copy of the full economic analysis is available for review at the location listed in the **ADDRESSES** section at the beginning of this document and at *http://www.aphis.usda.gov/ppd/rad/avianecon.pdf*.

We do not have enough data for a comprehensive analysis of the economic effects of this interim rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this rule. We are inviting comments about this rule as it relates to small entities. In particular, we are interested in determining the number and kinds of small entities who may incur benefits or costs from implementation of this interim rule and the economic effect of those benefits or costs.

Authorization for Payment of Indemnity

The Secretary of Agriculture is authorized to carry out operations and measures to detect, control, or eradicate any diseases affecting livestock (7 U.S.C. 8308). These measures include the payment of claims growing out of the destruction of animals, articles, and means of conveyance (7 U.S.C. 8308).

Subject to available funding, this rule will permit compensation of up to 50 percent of the value of poultry destroyed because of LPAI associated with a disease situation in Virginia, plus 50 percent of the costs of the destruction and disposal of the poultry. It will allow both contract growers and owners to be compensated for losses, and for each contract grower to be compensated for 100 percent of his or her losses, up to the amount that the owner is eligible to receive before grower compensation is deducted. Language requiring appraisal before depopulation is amended to allow birds to be valued after depopulation based on the age and type of birds. Finally, except in limited situations, the rule requires a 7-day waiting period following cleaning and disinfection before poultry houses may be restocked. A key issue in terms of benefits and distributional issues is compensation to growers.

We consider it important to formalize provisions to share indemnity payments among poultry owners and poultry growers, both of whose productive assets are imbedded in the value of the birds. For example, an owner may own large numbers of birds located on several different farms where they are cared for by contract growers who provide the housing, equipment, labor, and other inputs. There is at present no formal requirement or procedure for assuring that the indemnity is properly shared with the contract grower, depending on the terms of the contractual arrangement. But if the owner does not pass on the proper amount to the grower, the grower loses costs committed to production when flocks under his or her care are depopulated.

Comparison of Baseline With This Rule

The existing regulations provide that APHIS and the States will cooperate in controlling and eradicating disease. For most diseases, including LPAI, the regulations prior to this interim rule provided that APHIS may pay 50 percent of the costs of indemnity.

In assessing the need for this interim rule, we identified the baseline and an alternative:

1. The baseline option is to maintain the status quo, where State and industry efforts to control LPAI are supported by Federal technical assistance and by Federal compensation of up to 50 percent of the costs.

2. The alternative provides for up to 50 percent Federal compensation and allows for both growers and owners to be compensated for economic losses arising from depopulation. It also allows growers to be fully compensated for their losses, provided that the amount for each grower does not exceed the amount that the owner of the poultry is eligible to receive before grower compensation is deducted. In addition, appraisal and restocking provisions are added.

The baseline and the alternative differ with respect to three broad issues: (1) Distribution of compensation between owners and growers; (2) appraisal; and (3) restocking. The baseline and the alternative are alike in every respect except for the distribution of compensation paid by the Federal Government. In the baseline, the Federal Government pays all compensation to the owner and, in the alternative, the Federal Government pays compensation to the owner and the grower.

Alternative: 50 Percent Federal Compensation and Payment to Growers

In this alternative, the key issue for comparison in terms of benefits and distributional issues is compensation of growers. APHIS is amending the regulations so that contract growers, as well as poultry owners, can be compensated for economic losses arising from depopulation.

For contract growers, this is a significant change from the baseline and a benefit. Prior to this interim rule, the regulations have been interpreted to mean that the owner of the bird should receive the compensation. Owners own the bird and provide most of the physical inputs, such as feed, into production. The farmer—or contract grower who raises the bird—provides inputs such as labor, electricity, and housing. Embedded in the value of a bird at any point in time is the value of the physical inputs as well as the value of the farmer's labor and inputs. In the past, only one payment check was issued. It went to the owner who, depending on the terms of the contractual relationship, could compensate the grower or not.

By targeting growers for indemnities, the Federal Government enhances the probability of rapid reporting by growers' agents who are in a position to quickly report a disease situation and thus enhances the likelihood of prompt eradication of the disease. In addition, this alternative will benefit poultry growers who could otherwise suffer uncompensated economic losses from participating in an eradication program. If growers are not compensated, any sunk mortgage, electricity, or labor costs a grower has invested in a flock are lost when the flock is depopulated. Some of these costs, such as mortgage costs, continue even if there are no poultry on the grower's premises.

Language relating to appraisal is also being changed in this interim rule. This change is more of a clarification than a substantive change with pronounced economic effects. Language in the regulations prior to this interim rule required that poultry be appraised before being depopulated. However, appraisal *per se* is often an impracticable approach for valuing commercial poultry flocks that can number hundreds of thousands of birds in size. Using a standard value per bird calculated by age (or weight) and type of bird (meat turkey, meat broiler, or breeder turkey, for example) is often more reasonable and effective than appraisal. Further, it could be difficult or unproductive to hold infected birds pending appraisal, or impossible to appraise birds that have already been incinerated, buried, or otherwise disposed of.

Finally, except in limited situations, the alternative requires a 7-day waiting period after cleaning and disinfection before poultry houses may be restocked. The baseline regulation is silent on the issue of restocking. This is a new requirement that will impose costs on industry, primarily on the growers whose houses will remain idle during cleaning and disinfection and the waiting period after, but that will confer benefits on industry as a whole in terms of reduced likelihood of reinfection.

Chronology of the 2002 LPAI Situation in the Shenandoah Valley

On April 1, 2002, the Virginia Department of Agriculture and Consumer Services (VDACS) confirmed that 20 flocks of birds in 4 Shenandoah Valley, VA, counties were infected with LPAI. As of June 18, 2002, 11 weeks later, 165 farms had been quarantined and roughly 4.7 million birds had been depopulated. Turkey farms, raising both meat birds (126 farms) and breeder birds (26 farms), had been hardest hit, accounting for 152 of the affected premises. Six Virginia counties were affected, with the bulk of cases (142) reported in Rockingham County.

State Response

To control spread of disease, VDACS has set up quarantines around farms, implemented mandatory pre-slaughter testing on all breeder birds, commercial turkeys and broilers, as well as mandatory testing of any flocks with respiratory symptoms. If a flock tests positive, officials quarantine the farm immediately and order the destruction of the flock within 24 hours if logistically possible. State and industry have collaborated on surveillance, depopulation, disposal and diagnostics.

Coordinated State and Federal Response

Beginning April 15, 2002, a significant Federal component joined the State of Virginia in an effort to contain the spread of the disease. The joint Federal/State task force has collaborated on diagnosis and inspection, disposal, cleaning and disinfection, vector control, and disease surveillance.

The U.S. Poultry Industry

The United States is the world's largest producer and exporter of poultry meat. In 1999, the most recent year for which Economic Research Service (ERS) reports summarized data, U.S. poultry meat production totaled 35.3 billion pounds, of which 83 percent was broiler meat, 15 percent was turkey meat, and 2 percent was other chicken meat. The total farm value of U.S. poultry production in 1999 was $22.4 billion. Broiler production accounts for the majority of the value at $15.1 billion, followed by eggs at $4.3 billion, turkey at $2.8 billion, and other chicken at $68 million.

Broiler production is concentrated in a group of States stretching from Delaware, south along the Atlantic Coast to Georgia, then westward through Alabama, Mississippi, and Arkansas. In 1999, these States accounted for over 70 percent of broilers produced in the United States. The top broiler-producing States were: Georgia (1.24 billion head); Arkansas (1.2 billion head); Alabama (0.971 billion head); Mississippi (0.735 billion head); and North Carolina (0.674 billion head).

U.S. turkey production in 1999 totaled 273 million birds with a combined live weight of 6.9 billion pounds. Production of turkey is somewhat more scattered geographically than broiler production. The top five turkey-producing States are North Carolina, Minnesota, Arkansas, Virginia, and California.

The United States is the world's largest exporter of broilers. In 1999, broiler exports totaled 4.920 billion pounds (17 percent of total production), valued at $1.4 billion. Demand for U.S. broiler products has fluctuated over the last several years due to changing economic conditions and currency exchange rates in the major exporting countries. In 1999, the largest importers of U.S. broiler products were Russia (including the Baltic countries) and China (including Hong Kong), which together accounted for 62 percent of total shipments of U.S. broiler products, on a quantity basis.

The United States is also the world's largest exporter of turkey products. In 1999, U.S. turkey exports were 378 million pounds and were valued at $198 million. Only 11 percent of turkey exports were as whole birds, with the majority of shipments being lower-valued turkey parts or ground or mechanically deboned meat (MDM). Many importing countries mix ground or MDM turkey meat with other meats in sausage production.

Virginia Poultry Industry

In 2000, Virginia was the fourth ranking turkey-producing State and the eighth ranking broiler-producing State. Virginia produced 25.5 million turkeys (almost 10 percent of the U.S. total) valued at $238 million, and 265 million commercial broilers valued at $441 million. Gross income from Virginia broilers, turkeys, and all other poultry totaled over $700 million in 2000. Virginia's poultry industry is concentrated in the Shenandoah Valley. A recent industry survey determined that of the 1,285 poultry farms in Virginia, 1,100 were located in the Shenandoah Valley, and all were contract growers.

Structure of the U.S. Poultry Industry

Contract production dominates the Virginia and the U.S. chicken, turkey, and egg industry. Owners place poultry on farms, and the farmer (or contract grower) cares for the birds until they reach processing size (usually 6.5 weeks for broilers, and 17–24 weeks for turkeys). Typically the owner provides chicks, feed, veterinary supplies and services, management services, field personnel, and transportation for the birds to and from the farm. The grower provides labor, land and housing facilities, utilities, and other operating expenses, such as repairs and maintenance.

Specific contract terms vary greatly from situation to situation. Farmers are compensated by owners at the end of the grow-out period. The compensation typically consists of three components: (1) A base payment (per-bird payment or a per-pound fee); (2) an incentive or performance payment to reward efficient producers; and (3) a disaster clause that may compensate the grower for losses resulting from natural disasters, such as flood, excessive heat, fire, or for damage or loss of potential production. Some contracts have provisions under which owners can compensate growers for losses arising from depopulation and others do not.

Compensation to Owners and Growers

This interim rule will allow both owners and growers to be compensated for their losses arising from depopulation of birds affected with LPAI. When a bird is depopulated and an indemnity is paid solely to an owner who does not pass on a portion to the grower, the grower suffers uncompensated economic losses. The process of compensating growers and owners will have three separate steps: (1) Calculation of per bird payments by age and type of bird; (2) determination of how much of this payment should go to growers and how much to owners; and (3) development of procedures for paying growers and owners.

In conjunction with industry, production experts, and poultry price specialists, the Department has developed reference tables that specify per bird indemnity payments based on the age and type of bird. Fair market values have been developed for breeder birds (breeder broilers, breeder turkey hens, and breeder turkey toms), for meat birds (broilers, hens, and toms), and for table egg layers (two table egg layer flocks have been depopulated) using appropriate methodologies. These tables are available in the full economic analysis for this rule, which is available for review at the location listed in the **ADDRESSES** section at the beginning of this document and at *http://www.aphis.usda.gov/ppd/rad/avianecon.pdf.*

Because there is limited price information (the U.S. poultry industry is a vertically integrated industry with no markets for poultry at intermediate stages of development), it has been necessary to develop ''fair market values'' for meat birds depopulated prior to ''grow-out'' and for breeder birds, which are not typically sold at intermediate stages of development. In brief, the approach that has been taken is to start with published wholesale prices for meat birds (broilers and turkeys) and work backwards. Transportation and processing costs are subtracted out to arrive at broiler and turkey values. Then production costs are subtracted to arrive at the value of the chick. Then hatchery costs are subtracted to determine the value of a fertile egg. The value of a fertile egg times the number of fertile eggs laid equals the gross value of a breeding bird. Gross value less egg production cost equals the net value of a breeding bird. The value of birds at less than slaughter weight is calculated by adjusting for the cost of feed not fed. For breeders in production, adjustment is made for fertile eggs already produced and, for breeders being raised, adjustment is made for feed not fed.

Compensation of Growers and Owners

The Department has determined that, subject to available funding, growers may recoup 100 percent of their eligible costs regardless of the age at which the birds are depopulated, up to 50 percent of all eligible losses incurred by each owner (as determined before grower compensation is deducted) resulting from the destruction of poultry affected with the disease. Grower payments will be based on historical contract settlement sheets or historical amounts paid per bird by companies in the past. Subject to available funding, payments to owners will equal 50 percent of the estimated value of the birds and the cost of destroying and disposing of the birds, minus grower compensation.

Cost-Benefit Analysis

The final cost of this rule will depend on a number of factors, including the number, type, and age of birds depopulated; actual indemnity paid per bird; and other program costs. Given the provisions of this rule (a 50 percent compensation cap on total compensation to owners and growers, with growers being compensated up to 100 percent of their losses) and the depopulation numbers as of October 2, 2002, of 4.74 million birds, the total compensation bill is estimated at $51 million, with growers being compensated $13.9 million and owners being compensated $37.1 million.

The groups that primarily benefit because of a disease eradication campaign include consumers and those owners and growers whose flocks have remained healthy. The groups that bear the primary burden of the eradication effort are the owners and growers whose flocks are depopulated. In addition to the value of lost production, the owners and growers of affected birds may also bear costs of cleanup, disinfection, transportation, foregone income, and other financial hardships.

The benefits of this rule are not quantified, but are expected to significantly exceed the costs. They stem from the enhanced probability of rapid detection and prompt eradication of a disease situation. Benefits include: (1) Avoided owner and grower losses from disease morbidity and mortality; (2) avoided consumer price increases resulting from decreased supplies; and (3) avoided trade bans (State, regional, or national) that result when trading partners close markets because of disease. In addition by eradication of a disease situation of LPAI, we reduce the probability of the disease mutating into HPAI and spreading to densely populated poultry production areas on the eastern seaboard, which would have severe industry costs.

Although a quantified cost-benefit analysis was not conducted for this disease situation, the full economic analysis for this rule does summarize an economic analysis by ERS of a 1983–1984 outbreak of HPAI that affected parts of Pennsylvania, New Jersey, Maryland, and Virginia. That analysis found that the program and indemnity costs were small compared to losses avoided (consumer losses from increased prices). That analysis found that program and indemnity costs were $55 million ($98 million in 2002 dollars). If the outbreak had spread to the Delmarva Peninsula in Delaware, Maryland, and Virginia, consumer losses due to increased prices would have approached $492 million ($882.2 million in 2002 dollars). If the outbreak had spread to the entire eastern seaboard, consumer losses due to increased prices would have approached $5.6 billion ($10.04 billion in 2002 dollars) in increased consumer prices for eggs, fowl, broilers, turkeys, pork, and beef. Although market conditions have changed from the time that analysis was conducted, and although the current disease situation differs from the 1983–1984 outbreak, we believe that the conclusion holds that benefits of this action will significantly outweigh costs. Please also note that the ERS estimates do not include any potential effects on trade. We believe that the avoidance of potential reductions in trade increases the benefits of this interim rule substantially.

Potential Effects on Small Entities

To the extent that the interim rule contributes to the elimination of AI in Virginia, all affected entities should benefit over the long term. In the short term, however, the economic effects will vary.

As of June 18, 2002, 163 Shenandoah Valley poultry farms in a six-county area of Virginia were quarantined because of LPAI. Assuming the LPAI event remains localized in this area, 5 or 6 poultry companies/integrators who own the affected poultry, and a minimum of 104 to a maximum of 1,100 contract growers could be affected by this rule. A minimum of 7 and maximum of 15 poultry processors could be affected by this rule. In addition, other entities not yet identified may be directly or indirectly affected by the disease situation and/or the interim rule.

The poultry companies/integrators who own the birds are all large, vertically integrated concerns that do not meet the Small Business Administration (SBA) small-entity criteria. There are 1,100 contract poultry growers in the Shenandoah Valley. It is unclear at this time how many contract growers will be affected by this rule, or how many of them will qualify for consideration as small entities. The SBA defines small poultry operations as those earning gross per-farm receipts of no more than $750,000 annually.

There were 15 poultry processing plants in the State of Virginia in 1997. Seven of the processing plants were located in Rockingham and Shenandoah Counties. The SBA defines small poultry processing plants as those earning receipts of no more than $500,000 annually. It is unclear at this time how poultry processing plants will be affected by this rule. Census data for 1997 suggests that most of the processing plants would not qualify as small businesses because their average revenues exceed $100 million annually.

Reporting and Recordkeeping

The reporting and recordkeeping requirements in this rule are discussed below under the heading ''Paperwork Reduction Act.''

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

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). OMB has assigned control number 0579–0208 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 02–048–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 02–048–1 and send your comments within 60 days of publication of this rule.

This interim rule amends the regulations in a way that will allow the Department to pay indemnity to contract growers and owners relating to poultry destroyed because of low pathogenic avian influenza associated with a disease situation in Virginia. The

Department may pay all eligible losses of a contract grower, up to the amount that the owner is eligible to receive before grower compensation is deducted, and up to 50 percent of eligible losses of owners, minus any amount paid to the contract grower of a flock. Implementing this program will require affected entities to complete an appraisal and indemnity claim form, its accompanying worksheet, and depopulation agreements. 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 hour per response.

Respondents: Participating poultry owners and growers, APHIS accredited veterinarians, State animal health officials, and State personnel who perform appraisal work.

Estimated annual number of respondents: 800.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 1,600.

Estimated total annual burden on respondents: 1,600 hours.

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

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 is revised to read as follows:

Authority: 7 U.S.C. 8303–8306, 8308, 8310, 8315; 7 CFR 2.22, 2.80, and 371.4.

§ 53.2 [Amended]

2. In § 53.2, paragraph (b) is amended by adding, immediately after the phrase "control and eradication of the disease, and" the words ", except as provided in § 53.11,'.

3. In § 53.4, paragraph (a) is revised, paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added to read as follows:

§ 53.4 Destruction of animals.

(a) Except as provided in paragraph (b) of this section, animals infected with or exposed to disease shall be killed promptly after appraisal and disposed of by burial or burning, unless otherwise specifically provided by the Administrator, at his or her discretion. In the case of animals depopulated due to infectious salmon anemia, salvageable fish may be sold for rendering, processing, or any other purpose approved by the Administrator. In the case of poultry depopulated because of low pathogenic avian influenza related to the 2002 disease situation in Virginia associated with the H5 or H7 virus, poultry may be slaughtered and sold. The proceeds gained from the sale of the fish or poultry will be subtracted from any payment from APHIS for which the producer or owner is eligible under § 53.2(b) or § 53.11.

(b) In the case of low pathogenic avian influenza related to a 2002 disease situation in Virginia associated with the H5 or H7 virus, the value of poultry depopulated because of the disease may be calculated following destruction and disposal of the poultry, based on the number, type, and age of the animals destroyed.

* * * * *

§ 53.7 [Amended]

4. Section 53.7 is amended by adding, immediately after the second sentence, the following sentence: "In the case of low pathogenic avian influenza related to the 2002 disease situation in Virginia associated with the H5 or H7 virus, premises may not be restocked with poultry until at least 7 days following such cleaning and disinfection, unless the Administrator determines that a shorter or longer period of time is adequate or necessary to protect new poultry against infection."

5. Section 53.8 is revised to read as follows:

§ 53.8 Presentation of claims.

(a) Except for claims made under § 53.11, claims for the following must be presented to APHIS, through the inspector in charge, on a form approved by the Administrator:

(1) Compensation for the value of animals;

(2) The cost of burial, burning, or other disposition of animals;

(3) The value of material destroyed; and

(4) The expenses of destruction.

(b) In the case of claims made under § 53.11, claims for compensation for losses from poultry destroyed or to be destroyed must be presented to APHIS, through the inspector in charge, on a form approved by the Administrator, and the claim must specify the number, type, and age of the poultry.

(c) To be considered by the Department, claims made under § 53.11 must be submitted to APHIS within 90 days after December 9, 2002 or the destruction of the poultry, whichever is later.

(Approved by the Office of Management and Budget under control number 0579–0208)

6. A new § 53.11 is added to read as follows:

§ 53.11 Payments arising from low pathogenic avian influenza; conditions for payment.

In the case of low pathogenic avian influenza related to a 2002 disease situation in Virginia associated with the H5 or H7 virus, the Administrator may pay claims, subject to available funding, as follows:

(a) *For contract growers.* The Administrator may pay a contract grower up to 100 percent of the losses identified in accordance with the LPAI compensation plan, up to the amount that the owner is eligible to receive before grower compensation is deducted.

(b) *For owners.* The Administrator, in accordance with § 53.4, may pay an owner up to 50 percent of the value of the poultry destroyed plus 50 percent of the costs of destruction and disposal of the poultry, in accordance with the LPAI compensation plan, minus the amount paid in accordance with paragraph (a) of this section to the contract grower of that poultry.

(c) *Conditions.* Payments to be made in accordance with paragraph (a) or (b) of this section are conditioned on each claimant's complying with all applicable requirements of this part and, additionally, agreeing to and complying with the specific conditions set forth in the ''Avian Influenza Depopulation Agreement'' regarding cleaning and disinfection, restocking, surveillance, and other disease prevention measures.

(Approved by the Office of Management and Budget under control number 0579–0208)

Done in Washington, DC, this 30th day of October 2002.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 02–27988 Filed 10–30–02; 1:21 pm]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 7, 9, 19, 20, 26, 30, 31, 33, 39, 50, 51, 52, 54, 55, 71, 75, 100 and 110

RIN 3150–AH01

NRC Public Document Room Address Change and Corrections to Information Collection Provisions

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect the new address for the Public Document Room (PDR) and to correct information collection sections in the Code of Federal Regulations. These amendments are necessary to inform the public of these administrative changes to the NRC regulations.

EFFECTIVE DATE: November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Alzonia W. Shepard, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6864, *e-mail:aws@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has relocated its Public Document Room (PDR) to the NRC's headquarters building, One White Flint North, located at 11555 Rockville Pike (first floor), Rockville, Maryland. The NRC is amending portions of its regulations to reflect the relocation of the PDR. This final rule also corrects the paragraphs listing approved information collection requirements in the information collection sections of several 10 CFR parts. These corrections are necessary to reflect information collections that were added or removed by specific rulemaking actions for which conforming changes were not made.

Because these amendments deal solely with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). These amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date, because these amendments are of a minor and administrative nature, dealing with the relocation of the agency PDR and correction of information collection sections.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22 (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0043, –0044, –0014, –0146, –0017, –0016, –0015, –0130, –0011, –0021, –0151, –0155, –0018, –0008, –0132,—0002, –0055, –0093, and –0036.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because this rule is administrative in that it amends the regulations to reflect the current address for the Public Document Room and corrects information collection sections in the Code of Federal Regulations. These are considered minor non-substantive amendments and will not have a significant impact on NRC licensees or the public.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule because this rule does not involve any provisions that would impose a backfit as defined in 10 CFR Chapter I. Therefore a backfit analysis is not required for this rule.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 1

Organization and functions (Government Agencies).

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 7

Advisory committees, Sunshine Act.

10 CFR Part 9

Criminal penalties, Freedom of information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts,