

Section 4279.72(b) discusses rights and liabilities when a guaranteed portion of a loan is sold to a holder. It states, in part, that the lender will be liable for payments made by USDA to any holder in the event of “material fraud, negligence or misrepresentation by the lender or the lender’s participation in or condoning of such material fraud, negligence or misrepresentation.” Section 4279.72(b) does not, however, refer to the other conditions listed in § 4279.72(a).

The Agency believes the lender’s responsibility to reimburse the Agency for the improper activity should not be dependent upon whether the lender or holder owns the loan guarantee. However, the Agency is concerned that this policy is not sufficiently clear in this regulation. Therefore, the Agency is clarifying its position on this matter. The regulatory change is not retroactive nor does it affect the rights of current holders. However, the Agency recognizes that the issue should be clarified in the regulation. Accordingly, the Agency is proposing to make these changes in this proposed rule.

II. Discussion of Change

Section 4279.72(a) addresses the lender’s coverage under the loan note guarantee. It also identifies those instances when the conduct of a holder may jeopardize their interest in the loan note guarantee. Section 4279.72(b) addresses the holder’s coverage under the loan note guarantee. The change being made by this rule clarifies that having a holder purchase part of the loan note guarantee does not increase the coverage provided to the lender under the loan note guarantee. Therefore, the Agency will require the lender to reimburse it for any amount it pays to a holder that would not have been paid to a lender under § 4279.72(a).

The Agency is proposing to revise § 4279.72(b) to address the situation discussed in the “Background” section and similar situations.

List of Subjects in 7 CFR Part 4279

Loan programs—Business and industry—Rural development assistance, Rural areas.

For the reasons set forth in the preamble, chapter XLII, title 7 of the Code of Federal Regulations is proposed to be amended as follows:

Chapter XLII—Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture

PART 4279—GUARANTEED LOANMAKING

1. The authority citation for part 4279 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932(a); and 7 U.S.C. 1989.

Subpart A—General

2. Amend § 4279.72 by revising the last sentence of paragraph (b) to read as follows:

§ 4279.72 Conditions of guarantee.

* * * * *

(b) * * * The lender will reimburse the Agency for any payments the Agency makes to a holder of lender’s guaranteed loan that, under the Loan Note Guarantee, would not have been paid to the lender had the lender retained the entire interest in the guaranteed loan and not conveyed an interest to a holder.

* * * * *

Dated: July 12, 2011.

Dallas Tonsager,

Under Secretary Rural Development.

[FR Doc. 2011–18007 Filed 7–18–11; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 53, 71, 82, 93, 94, 95, and 104

[Docket No. APHIS–2009–0094]

RIN 0579–AD45

Importation of Live Birds and Poultry, Poultry Meat, and Poultry Products From a Region in the European Union

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of animals and animal products by recognizing 25 Member States of the European Union as the APHIS-defined European Union poultry trade region and adding it to the list of regions we consider to be free of Newcastle disease. We are taking this action based on a risk evaluation that we prepared in which we determined that the proposed region meets our requirements for being considered free of Newcastle disease. We also

determined that the region meets our requirements for being considered free of highly pathogenic avian influenza. In addition, we are proposing to establish requirements governing the importation of live birds and poultry, including hatching eggs, and poultry meat and products from the APHIS-defined European Union poultry trade region, and to update avian disease terms and definitions. These actions would facilitate the importation of live birds and poultry, and poultry meat and products, from the APHIS-defined European Union poultry trade region while protecting the United States from communicable avian diseases.

DATES: We will consider all comments that we receive on or before September 19, 2011.

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

- **Federal eRulemaking Portal:** Go to (<http://www.regulations.gov/#!documentDetail;D=APHIS-2009-0094-0001>).

- **Postal Mail/Commercial Delivery:** Send your comment to Docket No. APHIS–2009–0094, 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-2009-0094>) 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) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Javier Vargas, Case Manager, National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) regulations in title 9 of the Code of Federal Regulations (CFR), parts 93, 94, and 95, govern the importation into the United States of specified animals and animal products and byproducts to prevent the introduction of various animal diseases, including exotic Newcastle disease ¹

¹ For reasons explained later in this document, we propose to replace in the regulations the term

and highly pathogenic avian influenza (HPAI).

Newcastle disease, a contagious disease of birds and poultry caused by a paramyxovirus, is one of the most infectious diseases of poultry in the world. Death rates of nearly 100 percent can occur in unvaccinated poultry flocks. Newcastle disease can also infect and cause death even in vaccinated birds and poultry.

Several strains of avian influenza (AI) virus throughout the world can cause varying degrees of illness in many species of birds, including chickens, turkeys, pheasants, quail, ducks, geese, and guinea fowl. AI viruses are characterized as low pathogenicity (LP) or high pathogenicity (HP) by their ability to produce disease or by their molecular characteristics. The ability of the virus to cause clinical signs may depend on the species of bird infected and may change over time, becoming more or less pathogenic. HPAI is an extremely infectious and potentially fatal form of AI in birds that, once established, can spread rapidly from flock to flock. The H5 and H7 subtypes of LPAI have the potential to mutate into HPAI. For this reason, LPAI subtypes H5 and H7 are considered along with any subtype of HPAI as notifiable forms of AI by the World Organisation for Animal Health (OIE).²

Existing regulations in § 94.6 restrict the importation of carcasses, parts of products of carcasses, and eggs (other than hatching eggs)³ of poultry, game birds, and other birds, from all regions where Newcastle disease or any subtype of HPAI are considered to exist.

Paragraph (a)(1) of § 94.6 states that Newcastle disease is considered to exist in all regions of the world except for the regions listed. Paragraph (a)(2) refers readers to an APHIS Web site⁴ listing regions in the world in which any subtype of HPAI is considered to exist. Paragraph (b) sets forth processing, handling, and shipping requirements for importations of poultry carcasses, and parts or products of carcasses, including meat, from regions where Newcastle disease or HPAI is considered to exist.

Paragraph (c) of § 94.6 sets forth requirements for importing eggs (other than hatching eggs) from poultry, game

birds, or other birds if the birds or poultry are raised in any region where Newcastle disease is considered to exist, if the eggs are imported from any region where Newcastle disease is considered to exist, or if the eggs are moved into or through any region where Newcastle disease is considered to exist at any time before importation or during shipment to the United States.

Under our regulations in 9 CFR part 92, the representative of the national government(s) of any country or countries with the authority to do so may request that all or part of the country or countries be recognized as a region for animal health status purposes. In order to consider a region for recognition, APHIS requires that the applicant provide information about the proposed region regarding animal disease status, diagnostic capabilities, control measures, and related subjects listed in § 92.2 of the regulations. APHIS uses this information to help determine whether importation of specific articles can be safely allowed, and if so, publishes a proposal stating conditions under which imports are permitted.

The region-based model draws on the concept that restrictions on the movement of animals and animal products for the purpose of disease control are most effective when applied to geographically homogenous areas with respect to disease distribution and livestock health infrastructures. Evaluating a region spanning two or more countries, or parts of countries, considers the risks inherent in the free trade of animals and animal products across national borders.

In 2006, the European Commission⁵ (EC) requested recognition of the animal health status of a region with respect to Newcastle disease and HPAI. The region consists of the 25 European Union (EU) Member States (EU-25) that comprised the EU in 2005.⁶ The regulations currently list nine Member States of the EU-25 as regions in which Newcastle disease is not known to exist.⁷ APHIS conducted a risk evaluation of the EU-25 as a single region that would be under the harmonized regulation and

oversight of the EC, and to which we would apply a single set of requirements for the importation of live birds and poultry, and poultry meat and products, from the region into the United States.⁸ As part of the risk evaluation, we conducted a site visit to representative EU-25 Member States. We also evaluated animal health status information submitted by the EC and consulted information from previous APHIS evaluations.

We have determined that the EU-25 is free of Newcastle disease and HPAI under our requirements and that the EC has demonstrated the ability to rapidly detect and contain outbreaks of these diseases, effectively limiting the need for movement restrictions to distinct Administrative Units within the region.⁹ We also determined that the risk of avian disease is evenly distributed across the EU-25 because of the free trade in live birds and poultry, and poultry meat and products, across national borders within the region, and because the EC uniformly applies and enforces its animal disease regulations in all EU Member States.

Our findings are described in detail in the risk evaluation, which may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. It may also be viewed on the *Regulations.gov* Web site or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room).

Proposed Changes to the Regulations

We are proposing to amend the regulations by recognizing the Member States of the EU-25 as the APHIS-defined European Union poultry trade region (APHIS-defined EU-PTR). We are also proposing to add this new region to the list in § 94.6(a)(1)(i) of regions we consider to be free of Newcastle disease and to recognize the region as free of HPAI in accordance with § 94.6(a)(2)(i). Our proposed recognition of the APHIS-defined EU-PTR as free of these diseases is modeled after an EU region that we currently recognize as being low-risk for classical swine fever (CSF). In response to a 1997 request from the EC, APHIS conducted a risk analysis of a proposed region for CSF, and in a final rule published in the **Federal Register**

¹ "exotic Newcastle disease" with "Newcastle disease" and revise its definition; we use the latter term in this document when referring to the disease.

² Terrestrial Animal Health Code, Chapter 10, Article 10.4.1: (http://www.oie.int/eng/normes/mcode/en_chapitre_1.10.4.htm).

³ Regulations for importing hatching eggs are included in §§ 93.104, 93.205, and 93.209.

⁴ (http://www.aphis.usda.gov/import_export/animals/animal_import/animal_imports_hpai.shtml).

⁵ The European Commission (EC) is the governmental body responsible for representing the European Union as a whole. It proposes legislation, policies and programs of action, and implements decisions of the EU Parliament and Council.

⁶ The Member States constituting the EU-25 are: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

⁷ Denmark, Finland, France, Great Britain, Greece, Luxembourg, Republic of Ireland, Spain, and Sweden. These countries also meet our requirements for HPAI freedom.

⁸ "APHIS Risk Evaluation on the Importation of Highly Pathogenic Avian Influenza (HPAI) and Virulent Newcastle Disease (END) Virus from a European Union Region of Twenty-five Member States," June 2009.

⁹ Administrative Units are distinct governmental jurisdictions such as counties and provinces. See Appendix D of the risk evaluation document for a list of Administrative Units for each Member State.

and effective on April 7, 2003 (68 FR 16922–16941, Docket No. 98–090–5), we amended the regulations in § 94.24 to recognize an EU region in which CSF is not known to exist and from which swine and pork products may be imported into the United States under certain conditions.¹⁰

The April 2003 final rule also established a requirement, set forth in § 92.3, that whenever the EC establishes a quarantine for a disease in the EU in a region that APHIS recognizes as one in which the disease is not known to exist, and the EC imposes restrictions on the movement of animals or animal products from that quarantined area, such animals and animal products are prohibited importation into the United States. This prohibition applies to the APHIS-defined EU–CSF region when the EC imposes quarantine and movement restrictions for swine and pork products due to outbreaks of CSF. Because we acknowledge that limited outbreaks of Newcastle disease and HPAI will likely occur sporadically in EU–25 Member States, the prohibitions in § 92.3 would also apply to the APHIS-defined EU–PTR when the EC imposes quarantine and movement restrictions for poultry and poultry products due to outbreaks of Newcastle disease or HPAI.¹¹

We also propose to establish a new section, § 94.28, that sets forth import restrictions on live birds and poultry, and poultry meat and products, from the APHIS-defined EU–PTR. These restrictions would reduce the risk of introducing Newcastle disease or HPAI into the United States while acknowledging the EC's ability to successfully manage outbreaks of those diseases.

Import Restrictions for Poultry Meat and Products

Paragraph (a)(1)(i) of proposed § 94.28 would require that poultry meat and products, including eggs and egg products (other than hatching eggs) derived from birds and poultry imported from the APHIS-defined EU–

PTR must not have been derived from birds or poultry that were in any region when the region was classified in § 94.6(a)(1)(i) as one in which Newcastle disease is considered to exist, or any region when it was listed in accordance with § 94.6(a)(2)(i) as one in which HPAI is considered to exist, except for the APHIS-defined EU–PTR.¹² Under this exception, poultry meat and products could continue to be imported from unaffected parts of the APHIS-defined EU–PTR if a restricted zone for commercial poultry is established elsewhere in the region because of the detection of Newcastle disease or HPAI.

Paragraph (a)(1)(ii) of proposed § 94.28 would require that poultry meat and products must not have been derived from birds or poultry that were in any restricted zone within the APHIS-defined EU–PTR established because of detection of Newcastle disease or HPAI in commercial poultry. While EC regulations permit lifting a restricted zone as early as 21 days after disease control measures have been completed, APHIS would continue to observe the 90-day restriction periods established in § 93.104 for live birds and § 93.205 for poultry and eggs for hatching. The prohibition on imports of poultry meat and products from restricted zones imposed by the EC would continue from the time of detection until the designation of the zone as a restricted zone is removed by the competent veterinary authority of the Member State, or until 3 months (90 days) following depopulation of the poultry on affected premises in the restricted zone and the cleaning and disinfection of the last affected premises in the zone, whichever is later.

Paragraph (a)(1)(iii) of proposed § 94.28 would prohibit imports of poultry meat and products derived from birds and poultry that were in a restricted zone established within the APHIS-defined EU–PTR because of detection of Newcastle disease or HPAI in racing pigeons, backyard flocks, or wild birds, from the time of detection until the designation of the zone as a restricted zone is removed by the competent veterinary authority of the Member State. We acknowledge that in such instances a Member State may choose to lift zone restrictions sooner than the minimum 90 days that APHIS requires for zones established because of detection of Newcastle disease or HPAI in commercial poultry. However, we

have determined that (1) the Member States of the EU–25 exercise sufficient biosecurity practices such that isolated outbreaks in racing pigeons, backyard flocks, or wild birds are less likely to infect commercial poultry, and (2) importing commercial poultry meat and poultry products pose more of a potential disease threat to the U.S. poultry industry than do racing pigeons, backyard flocks, and wild birds. Whenever the EC establishes a restricted zone for racing pigeons, backyard flocks, or wild birds and subsequently lifts it, we would first confirm that the infection had not been introduced into commercial poultry in the restricted zone before we lift our import restrictions.

Paragraph (a)(2) of proposed § 94.28 would require that poultry meat and products imported from the APHIS-defined EU–PTR must not have been commingled with poultry meat and products derived from other birds and poultry that were in any of the regions or zones described in proposed § 94.28(a)(1)(i) through (a)(1)(iii). Additionally, we would provide that the poultry meat and products must not have been derived from birds and poultry that were commingled with other birds and poultry that were in any of the regions or zones described in proposed § 94.28(a)(1)(i) through (a)(1)(iii).

Paragraph (a)(3) of § 94.28 would require live birds and poultry from which poultry meat and products are derived to originate within the APHIS-defined EU–PTR. The farms from which they come would not be permitted to have received birds or poultry from outside the region.

Paragraph (a)(4) of proposed § 94.28 would require any equipment used in transporting birds and poultry from which poultry meat and products are derived not to have been used to transport live birds and poultry that do not meet the requirements we are proposing in § 94.28(b), unless the equipment and materials have first been cleaned and disinfected.

Paragraph (a)(5) of proposed § 94.28 would require poultry meat and products imported from the APHIS-defined EU–PTR to be accompanied by an inspection certificate issued by the competent veterinary authority of the Member State. The certificate would have to state that all applicable provisions of § 94.28(a)(1) through (a)(4) have been met.

Import Restrictions for Live Birds and Poultry, Including Hatching Eggs

Paragraph (b)(1)(i) of proposed § 94.28 would require that live birds and

¹⁰ The EU Member States constituting the CSF-free region in this rule included, with the exception of specified regions within Germany and Italy, the countries of Austria, Belgium, Germany, Greece, Italy, the Netherlands, and Portugal. A current list of Member States included in the EU–CSF region is located online at: (http://www.aphis.usda.gov/import_export/animals/animal_import/animal_imports_csf.shtml).

¹¹ EC regulations also require the establishment of control measures following the detection of LPAI based on the risk that some low pathogenic viruses may mutate into HPAI. Depending on an assessment of the risks posed by a particular LPAI outbreak, the control measures imposed by the EC may be less restrictive than those applied following the detection of HPAI.

¹² APHIS is studying issues concerning the importation of table eggs from regions where HPAI is considered to exist. More information on this issue can be found in an interim rule published and effective on January 24, 2011 (76 FR 4046–4056, Docket No. APHIS–2006–0074).

poultry (including hatching eggs) imported from the APHIS-defined EU-PTR must not have been in any region when that region was classified in § 94.6(a)(1)(i) as one in which Newcastle disease is considered to exist, or any region when the region was listed in accordance with § 94.6(a)(2)(i) as one in which HPAI is considered to exist, except for the APHIS-defined EU-PTR. Under this exception, live birds and poultry could continue to be imported from unaffected parts of the APHIS-defined EU-PTR if a restricted zone for commercial poultry is established elsewhere in the region because of the detection of Newcastle disease or HPAI.

Paragraph (b)(1)(ii) of proposed § 94.28 would require that live birds and poultry imported from the APHIS-defined EU-PTR must not have been in a restricted zone in the APHIS-defined EU-PTR established because of the detection of Newcastle disease or HPAI in commercial poultry. The prohibition on imports of live birds and poultry from a restricted zone would continue from the time of detection until the restricted zone designation is removed by the competent veterinary authority of the Member State, or until 3 months (90 days) following depopulation of the birds and poultry on affected premises in the restricted zone and the cleaning and disinfection of the last affected premises in the zone, whichever is later.

Paragraph (b)(1)(iii) of proposed § 94.28 would prohibit imports of live birds and poultry from a restricted zone in the APHIS-defined EU-PTR established because of detection of Newcastle disease or HPAI in racing pigeons, backyard flocks, and wild birds, from the time of detection until the designation of the zone as a restricted zone is removed by the competent veterinary authority of the Member State.

Paragraph (b)(2) of proposed § 94.28 would require that live birds and poultry offered for import not have been commingled with other birds and poultry that have at any time been in any of the regions or zones described in proposed § 94.28(b)(1)(i) through (b)(1)(iii).

Paragraph (b)(3) of proposed § 94.28 would require live birds and poultry offered for import to originate within the APHIS-defined EU-PTR. Their farms of origin would not be permitted to have received birds and poultry imported from outside the APHIS-defined EU-PTR.

Paragraph (b)(4) of § 94.28 would require that no equipment and materials used in transporting live birds and poultry have been used previously for transporting birds and poultry that do

not meet the other requirements we are proposing in § 94.28(b), unless the equipment and materials have first been cleaned and disinfected.

Paragraph (b)(5) of proposed § 94.28 would require that live birds and poultry imported from the APHIS-defined EU-PTR be accompanied by an inspection certificate issued by the competent veterinary authority of the Member State. The certificate would state that all applicable provisions of proposed § 94.28(b)(1) through (b)(4) have been met.

Paragraph (c) of § 94.28 would require that the certificates required in § 94.28(a)(5) and (b)(5) be presented by the importer to an authorized inspector at the port of arrival, upon arrival of the live birds, poultry, hatching eggs, or bird and poultry meat and products.

Because we are proposing to recognize the 25 Member States of the APHIS-defined EU-PTR collectively as a single region free of Newcastle disease and HPAI, we would remove from § 94.6(a)(1)(i) the nine EU-25 Member States individually listed as regions free of Newcastle disease: Denmark, Finland, France, Great Britain, Greece, Luxembourg, Ireland, Spain, and Sweden. The APHIS-defined EU-PTR would be included in proposed § 94.6(a)(1)(i) as a single region considered to be free of Newcastle disease.

Changes to Terms and Definitions

We propose to make changes to the regulations regarding the terms and definitions we use for Newcastle disease and HPAI. We would remove the word “exotic” from the current references to “exotic Newcastle disease” in 9 CFR parts 53, 82, 93, 94 and 95. We are making this change so that our terminology for this disease is consistent with that used in the OIE animal health standards. We also propose to update our definition of Newcastle disease in parts 53, 82, and 94. The definition currently included in these parts describes how a virulent strain of the virus presents itself but does not define the technical criteria for determining virulence. We would use the definition published in the OIE animal health standards because it includes the technical criteria of virulence.¹³

In parts 71, 93, and 104, we propose to remove the terms “fowl pest” and “fowl plague” from the regulations and replace them with “highly pathogenic avian influenza.” The terms currently in

the regulations predate identification of the avian influenza virus and are no longer commonly used in scientific discourse. This change would be consistent with our previous efforts to replace these terms in other parts of the regulations and reflects OIE terminology.¹⁴ In addition, we propose to add a definition of HPAI to § 94.0. We would use the definition of HPAI included in § 53.1 of the current regulations because it defines all HPAI subtypes, makes the regulations more consistent, and is consistent with the definition used by the OIE.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

The analysis examines impacts for U.S. small entities of a rule that would amend § 94.6 by establishing a region made up of 25 Member States of the EU and adding it to the list of regions considered to be free of Newcastle disease and HPAI. This region would be designated as the APHIS-defined EU-PTR, for which import restrictions for live birds and poultry, including hatching eggs, poultry meat, and poultry products would be uniformly applied. If outbreaks of either disease were to occur, this proposed rule would facilitate the continuation of imports from other areas within the APHIS-defined EU-PTR that are considered to be free of Newcastle disease and HPAI.

We expect the proposed rule to have negligible economic effects for U.S. entities, large or small. Nine EU Member States are currently permitted to export poultry or poultry products to the United States, but the quantities exported are small, and the quantities of birds, poultry, and poultry products that would be imported from the EU-PTR are not expected to be significant. EU Member States, in aggregate, exported only 40 metric tons of poultry meat to the United States in 2009. In contrast,

¹³ *Terrestrial Animal Health Code*, Article 10.13.1: (http://www.oie.int/eng/normes/mcode/en_chapitre_1.10.13.htm).

¹⁴ *Terrestrial Animal Health Code*, Article 10.4.1: (http://www.oie.int/eng/normes/mcode/en_chapitre_1.10.4.htm).

the United States is one of the world's largest producers and exporters of poultry meat; about 20 percent of U.S. poultry production was exported in 2009. Over 99 percent of U.S. live poultry imports, 97 percent of poultry meat imports, and 91 percent of hatching egg imports came from Canada in 2009. Imports from the APHIS-defined EU-PTR would therefore face a highly competitive U.S. market.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) No retroactive effect will be given to this rule, and (2) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with recognition of the APHIS-defined EU poultry trade region as being free of Newcastle disease and HPAI, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

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

List of Subjects

9 CFR Part 53

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

9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 95

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

9 CFR Part 104

Animal biologics, Imports, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR parts 53, 71, 82, 93, 94, 95, and 104 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. Section 53.1 is amended as follows:

- In the definition of *Disease*, by removing the word “exotic”.

- By removing the definition of *Exotic Newcastle Disease (END)*.

- By adding, in alphabetical order, a definition of *Newcastle disease* to read as set forth below.

§ 53.1 Definitions.

* * * * *

Newcastle disease. Newcastle disease is an acute, rapidly spreading, and usually fatal viral infection of poultry caused by an avian paramyxovirus

serotype 1 that meets one of the following criteria for virulence: The virus has an intracerebral pathogenicity index (ICPI) in day-old chicks (*Gallus gallus*) of 0.7 or greater; or multiple basic amino acids have been demonstrated in the virus (either directly or by deduction) at the C-terminus of the F2 protein and phenylalanine at residue 117, which is the N-terminus of the F1 protein. The term “multiple basic amino acids” refers to at least three arginine or lysine residues between residues 113 and 116. In this definition, amino acid residues are numbered from the N-terminus of the amino acid sequence deduced from the nucleotide sequence of the F0 gene; 113–116 corresponds to residues -4 to -1 from the cleavage site. Failure to demonstrate the characteristic pattern of amino acid residues as described above may require characterization of the isolated virus by an ICPI test. A failure to detect a cleavage site that is consistent with virulent strains does not confirm the absence of a virulent virus.

* * * * *

§ 53.2 [Amended]

3. In § 53.2, paragraph (b) is amended by removing the word “exotic”.

PART 71—GENERAL PROVISIONS

4. The authority citation for part 71 continues to read as follows:

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

§ 71.3 [Amended]

5. In § 71.3, paragraph (b) is amended by removing the words “European fowl pest” and adding the words “highly pathogenic avian influenza” in their place.

PART 82—NEWCASTLE DISEASE AND CHLAMYDIOSIS

6. The authority citation for part 82 continues to read as follows:

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

7. The heading for part 82 is revised to read as set forth above.

Subpart A—Newcastle Disease

8. The heading for subpart A is revised to read as set forth above.

Subpart A—[Amended]

9. In subpart A, revise all references to “END” to read “Newcastle disease”.

10. Section 82.1 is amended as follows:

- By removing the definition of *END*.

b. By adding, in alphabetical order, a definition of *Newcastle disease* to read as set forth below.

§ 82.1 Definitions.

* * * * *

Newcastle disease. Newcastle disease is an acute, rapidly spreading, and usually fatal viral infection of poultry caused by an avian paramyxovirus serotype 1 that meets one of the following criteria for virulence: The virus has an intracerebral pathogenicity index (ICPI) in day-old chicks (*Gallus gallus*) of 0.7 or greater; or multiple basic amino acids have been demonstrated in the virus (either directly or by deduction) at the C-terminus of the F2 protein and phenylalanine at residue 117, which is the N-terminus of the F1 protein. The term “multiple basic amino acids” refers to at least three arginine or lysine residues between residues 113 and 116. In this definition, amino acid residues are numbered from the N-terminus of the amino acid sequence deduced from the nucleotide sequence of the F0 gene; 113–116 corresponds to residues –4 to –1 from the cleavage site. Failure to demonstrate the characteristic pattern of amino acid residues as described above may require characterization of the isolated virus by an ICPI test. A failure to detect a cleavage site that is consistent with virulent strains does not confirm the absence of a virulent virus.

* * * * *

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

11. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.101 [Amended]

12. Section 93.101 is amended as follows:

a. In paragraph (g)(2), by removing the words “exotic Newcastle disease (END)” and adding the words “Newcastle disease” in their place.

b. By revising all references to “END” in footnote 7 and paragraphs (g)(3) and (g)(4) to read “Newcastle disease”.

§ 93.106 [Amended]

13. Section 93.106 is amended as follows:

a. In paragraph (c)(5)(iii), in the Cooperative and Trust Fund Agreement, in (A)(14), the second sentence, and in

(A)(17), the first sentence, remove the word “exotic” each time it occurs.

b. In paragraph (c)(5)(iii), in the Cooperative and Trust Fund Agreement, in (B)(4) and (B)(5), revise the references to “END” to read “Newcastle disease”.

§ 93.205 [Amended]

14. In § 93.205, paragraph (a), the fourth sentence is amended by removing the words “European fowl pest (fowl plague)” and adding the words “highly pathogenic avian influenza” in their place.

§ 93.209 [Amended]

15. In § 93.209, paragraph (b), the first sentence is amended by removing the word “exotic”.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, NEWCASTLE DISEASE, HIGHLY PATHOGENIC AVIAN INFLUENZA, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

16. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

17. The heading for part 94 is revised to read as set forth above.

18. Section 94.0 is amended as follows:

a. By removing the definition of *Exotic Newcastle Disease (END)*.

b. By adding, in alphabetical order, definitions of *APHIS-defined EU Poultry Trade Region*, *Highly pathogenic avian influenza*, and *Newcastle disease* to read as set forth below.

§ 94.0 Definitions.

* * * * *

APHIS-defined EU Poultry Trade Region. The European Union Member States of Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

Highly pathogenic avian influenza. Highly pathogenic avian influenza is defined as follows:

(1) Any influenza virus that kills at least 75 percent of eight 4- to 6-week-old susceptible chickens within 10 days

following intravenous inoculation with 0.2 mL of a 1:10 dilution of a bacteria-free, infectious allantoic fluid;

(2) Any H5 or H7 virus that does not meet the criteria in paragraph (1) of this definition, but has an amino acid sequence at the haemagglutinin cleavage site that is compatible with highly pathogenic avian influenza viruses; or

(3) Any influenza virus that is not an H5 or H7 subtype and that kills one to five chickens and grows in cell culture in the absence of trypsin.

* * * * *

Newcastle disease. Newcastle disease is an acute, rapidly spreading, and usually fatal viral infection of poultry caused by an avian paramyxovirus serotype 1 that meets one of the following criteria for virulence: The virus has an intracerebral pathogenicity index (ICPI) in day-old chicks (*Gallus gallus*) of 0.7 or greater; or multiple basic amino acids have been demonstrated in the virus (either directly or by deduction) at the C-terminus of the F2 protein and phenylalanine at residue 117, which is the N-terminus of the F1 protein. The term “multiple basic amino acids” refers to at least three arginine or lysine residues between residues 113 and 116. In this definition, amino acid residues are numbered from the N-terminus of the amino acid sequence deduced from the nucleotide sequence of the F0 gene; 113–116 corresponds to residues –4 to –1 from the cleavage site. Failure to demonstrate the characteristic pattern of amino acid residues as described above may require characterization of the isolated virus by an ICPI test. A failure to detect a cleavage site that is consistent with virulent strains does not confirm the absence of a virulent virus.

* * * * *

19. Section 94.6 is amended as follows:

a. By revising the section heading to read as set forth below.

b. In the paragraph (a) heading, by removing the words “*exotic Newcastle disease (END)*” and adding the words “*Newcastle disease*” in their place.

c. By revising paragraph (a)(1)(i) to read as set forth below.

d. By revising all references to “END” to read “Newcastle disease”.

§ 94.6 Carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from regions where Newcastle disease or highly pathogenic avian influenza is considered to exist.

(a) * * *

(1) * * *

(i) The following regions are considered to be free of Newcastle

disease: APHIS-defined EU Poultry Trade Region, Argentina, Australia, Canada, Chile, Costa Rica, Fiji, Iceland, Mexico (States of Campeche, Quintana Roo, and Yucatan), New Zealand, and Switzerland.

* * * * *

§ 94.23 [Amended]

20. Section 94.23 is amended by removing in paragraph (c) and paragraph (e) introductory text the word “exotic” each time it occurs.

§ 94.26 [Amended]

21. Section 94.26 is amended as follows:

a. In the introductory text, by removing the words “exotic Newcastle disease (END)” and adding the words “Newcastle disease” in their place.

b. By revising all references to “END” to read “Newcastle disease”.

22. A new § 94.28 is added to read as follows:

§ 94.28 Restrictions on the importation of poultry meat and products, and live birds and poultry, from the APHIS-defined EU poultry trade region.

(a) *Poultry meat and products.* In addition to meeting all other applicable provisions of this part, poultry meat and poultry products, including eggs and egg products (other than hatching eggs) imported from the APHIS-defined EU Poultry Trade Region must meet the following conditions:

(1) The poultry meat and products must not have been derived from birds and poultry that were in any of the following regions or zones, unless the birds and poultry were slaughtered after the periods described:

(i) Any region when the region was classified in § 94.6(a)(1)(i) as one in which Newcastle disease is considered to exist, or any region when the region was listed in accordance with § 94.6(a)(2)(i) as one in which HPAI is considered to exist, except for the APHIS-defined EU Poultry Trade Region;

(ii) A restricted zone in the APHIS-defined EU Poultry Trade Region established because of detection of Newcastle disease or HPAI in commercial poultry, from the time of detection until the designation of the zone as a restricted zone is removed by the competent veterinary authority of the Member State or until 3 months (90 days) following depopulation of the poultry on affected premises in the restricted zone and the cleaning and disinfection of the last affected premises in the zone, whichever is later; or

(iii) A restricted zone in the APHIS-defined EU Poultry Trade Region

established because of detection of Newcastle disease or HPAI in racing pigeons, backyard flocks, or wild birds, from the time of detection until the designation of the zone as a restricted zone is removed by the competent veterinary authority of the Member State.

(2) The poultry meat and products must not have been commingled with poultry meat and products derived from other birds and poultry that were in any of the regions or zones described in paragraphs (a)(1)(i) through (a)(1)(iii) of this section. Additionally, the poultry meat and products must not have been derived from poultry that were commingled with other poultry that were in any of the regions or zones described in paragraphs (a)(1)(i) through (a)(1)(iii) of this section.

(3) The live birds and poultry from which the poultry meat and products were derived must only originate from within the APHIS-defined EU Poultry Trade Region and the farms of origin must not have received live birds or poultry imported from outside the APHIS-defined EU Poultry Trade Region.

(4) No equipment or materials used in transporting the birds or poultry from which the poultry meat and products were derived from the farm of origin to the slaughtering establishment may have been used previously for transporting live birds or poultry that do not meet the requirements of § 94.28(b), unless the equipment and materials have first been cleaned and disinfected.

(5) The poultry meat and products, including eggs and egg products (other than hatching eggs) must be accompanied by a certificate issued by an official of the competent veterinary authority of the APHIS-defined EU Poultry Trade Region Member State who is authorized to issue the inspection certificate required by § 93.205 of this subchapter, stating that the applicable provisions of paragraphs (a)(1) through (a)(4) of this section have been met. The certification for poultry meat and products may be placed on the foreign meat inspection certificate required by § 381.196 of this title or may be contained in a separate document.

(b) *Live birds and poultry.* In addition to meeting all other applicable provisions of this title, live birds and poultry, including hatching eggs, imported from the APHIS-defined EU Poultry Trade Region must meet the following conditions:

(1) The birds and poultry must not have been in any of the following regions or zones, unless the birds and poultry are exported to the United States after the periods described:

(i) Any region when the region was classified in § 94.6(a)(1)(i) as one in which Newcastle disease is considered to exist, or any region when the region was listed in accordance with § 94.6(a)(2)(i) as one in which HPAI is considered to exist, except for the APHIS-defined EU Poultry Trade Region;

(ii) A restricted zone in the APHIS-defined EU Poultry Trade Region established because of detection of Newcastle disease or HPAI in commercial poultry, from the time of detection until the designation of the zone as a restricted zone is removed by the competent veterinary authority of the Member State or until 3 months (90 days) following depopulation of the poultry on affected premises in the restricted zone and the cleaning and disinfection of the last affected premises in the zone, whichever is later; or

(iii) A restricted zone in the APHIS-defined EU Poultry Trade Region established because of detection of Newcastle disease or HPAI in racing pigeons, backyard flocks, and wild birds, from the time of detection until the designation of the zone as a restricted zone is removed by the competent veterinary authority of the Member State.

(2) The birds and poultry must not have been commingled with other birds or poultry that have at any time been in any of the regions or zones described in paragraphs (b)(1)(i) through (b)(1)(iii) of this section.

(3) The birds and poultry must only originate from within the APHIS-defined EU Poultry Trade Region and the farms of origin must not have received birds or poultry imported from outside the APHIS-defined EU Poultry Trade Region.

(4) No equipment or materials used in transporting the birds and poultry may have been used previously for transporting birds or poultry that do not meet the requirements of this paragraph, unless the equipment and materials have first been cleaned and disinfected.

(5) The birds and poultry must be accompanied by a certificate issued by an official of the competent veterinary authority of the Member State who is authorized to issue the inspection certificate required by § 93.205 of this subchapter, stating that the applicable provisions of paragraphs (b)(1) through (b)(4) of this section have been met. The certification may be placed on the foreign meat inspection certificate required by § 381.196 of this title or may be contained in a separate document.

(c) *Presentation of certificates.* The certificates required by paragraphs (a)(5) and (b)(5) of this section must be

presented by the importer to an authorized inspector at the port of arrival, upon arrival of the birds, poultry, hatching eggs, or poultry meat and products at the port.

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

23. The authority citation for part 95 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 95.5 [Amended]

24. In § 95.5, paragraph (c) is amended by removing the words “exotic” and “subtype H5N1”.

§ 95.6 [Amended]

25. In § 95.6, paragraph (c) is amended by removing the word “exotic”.

PART 104—PERMITS FOR BIOLOGICAL PRODUCTS

26. The authority citation for part 104 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

§ 104.2 [Amended]

27. In § 104.2, paragraph (b) is amended by removing the words “fowl pest (fowl plague)” and adding the words “highly pathogenic avian influenza” in their place.

Done in Washington, DC, this 13th day of July 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–18108 Filed 7–18–11 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0717; Directorate Identifier 2010–NM–108–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 Airplanes; and Model A340–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During A330 and A340 aeroplanes fatigue tests, cracks appeared on the right (RH) and left (LH) sides between the crossing area of the keel beam fitting and the front spar of the Centre Wing Box (CWB). This condition, if not corrected, could lead to keel beam rupture which would affect the area structural integrity.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by September 2, 2011.

ADDRESSES: You may send comments by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Fax:** (202) 493–2251.
- **Mail:** U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail airworthiness.A330–A340@airbus.com; Internet <http://www.airbus.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday,

except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2011–0717; Directorate Identifier 2010–NM–108–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On July 24, 2007, we issued AD 2007–16–02, Amendment 39–15141 (72 FR 44731, August 9, 2007). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2007–16–02, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0024, dated February 12, 2010 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

During A330 and A340 aeroplanes fatigue tests, cracks appeared on the right (RH) and left (LH) sides between the crossing area of the keel beam fitting and the front spar of the Centre Wing Box (CWB). This condition, if not corrected, could lead to keel beam rupture which would affect the area structural integrity.

In order to maintain the structural integrity of the aeroplane, EASA AD 2006–0315R1 required repetitive special detailed