interest in land, NRCS will provide written notice by certified mail, return receipt requested, to the eligible entity at the eligible entity's last known address. The notice will set forth the nature of the noncompliance by the eligible entity and a 60-day period to cure. If the eligible entity fails to cure within the 60-day period, NRCS will take the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in land it seeks to protect.

**§ 1491.31 Appeals.**

(a) A person or eligible entity which has submitted an FRPP proposal and is therefore participating in FRPP, may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

(b) Before a person or eligible entity may seek judicial review of any administrative action taken under this part, the person or eligible entity must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for the purposes of judicial review, no decision will be a final agency action except a decision of the Chief under these provisions.

(c) Enforcement action undertaken by NRCS in furtherance of its vested property rights are under the jurisdiction of the Federal District Court and not subject to review under administrative appeal regulations.

**§ 1491.32 Scheme or device.**

(a) If it is determined by NRCS that a eligible entity has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid to such an eligible entity during the applicable period may be withheld or be required to be refunded, with interest, as determined appropriate by NRCS on behalf of the CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, and depriving any other person or entity of payments for easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

Signed this 11th day of January, 2011 in Washington, DC.

**Dave White,**

*Vice-President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.*

[FR Doc. 2011–1212 Filed 1–21–11; 8:45 am]

**BILLING CODE 3410–16–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Parts 93, 94, and 95

**[Docket No. APHIS–2006–0074]**

**RIN 0579–AC36**

## Highly Pathogenic Avian Influenza

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations concerning the importation of animals and animal products to prohibit or restrict the importation of bird and poultry products from regions where any subtype of highly pathogenic avian influenza is considered to exist. We are also adding restrictions concerning importation of live poultry and birds that have been vaccinated for certain types of avian influenza, or that have moved through regions where any subtype of highly pathogenic avian influenza is considered to exist. These restrictions supplement or replace existing restrictions on the importation of live birds and poultry, and bird and poultry products and byproducts from regions where exotic Newcastle disease or highly pathogenic avian influenza subtype H5N1 are considered to exist. They are necessary to prevent the introduction of highly pathogenic avian influenza into the United States.

**DATES:** This interim rule is effective on January 24, 2011. We will consider all comments that we receive on or before March 25, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0074* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2006–0074, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0074.

*Reading Room:* 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.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Julia Punderson, Senior Staff Veterinarian, National Center for Import and Export, Animal Health Policy and Programs, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737; (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 (referred to below as the regulations), 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 (END) and highly pathogenic avian influenza subtype H5N1.

END is a contagious disease of birds and poultry caused by a paramyxovirus. END is one of most infectious diseases of poultry in the world. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can also infect and cause death even in vaccinated birds and poultry.

Avian influenza is caused by a orthomyxovirus, the same family that includes viruses that cause human influenza. Worldwide, there are many strains of avian influenza (AI) virus that can cause varying amounts of clinical illness in birds and poultry. AI viruses can infect chickens, turkeys, pheasants, quail, ducks, geese and guinea fowl, as well as a wide variety of other birds. Migratory waterfowl have proved to be a natural reservoir for the less virulent strains of the disease known as low-pathogenicity avian influenza.

Classification of AI viruses is based on both biological and molecular characteristics of the virus. AI viruses are identified by a combination of two groups of surface proteins; the hemagglutinin or H proteins and the neuraminidase or N proteins. AI viruses also are characterized as low pathogenic (LP) or highly pathogenic (HP) by their ability to produce disease or by molecular characteristics. The ability to cause clinical signs may depend on the species of bird infected and may change over time, becoming more or less

pathogenic. Highly pathogenic avian influenza (HPAI) is an extremely infectious and potentially fatal form of the disease in birds and poultry that, once established, can spread rapidly from flock to flock.

In general, AI viruses of H5 and H7 subtypes are considered to be of greatest concern. The H5N1 subtype of HPAI (referred to below as HPAI subtype H5N1) that has caused outbreaks in birds and poultry in Asia, Africa, Europe, and other foreign regions has never been found in the United States. Other forms of HPAI have been detected in 1924, 1983 and 2004 in domestic poultry in this country. The 2004 outbreak was confined to a single flock and rapidly eradicated. There were no human illnesses reported in connection with these outbreaks; however, HPAI subtype H5N1 has caused human illness and death in other countries where people have handled or been in close contact with infected birds or poultry.

*Live Birds and Poultry*

The regulations in part 93, subparts A and B, require that most birds and poultry imported into the United States be accompanied by a permit and health certificate and be quarantined upon arrival for a minimum of 30 days to ensure the birds' or poultry's freedom from END, HPAI subtype H5N1, and other communicable diseases, including other subtypes of HPAI. Pet birds of U.S. origin that are returning to the United States and that have not been in any region where HPAI subtype H5N1 exists have been exempt from quarantine if they have been outside the country for less than 60 days. Such pet birds have been allowed to be maintained in confinement at the owner's residence, rather than in a USDA quarantine facility, if they have been outside the country for 60 days or more. Any U.S. origin pet birds or performing or theatrical birds or poultry that are returning to the United States and that have been in any region where HPAI subtype H5N1 exists have been required to undergo quarantine in a USDA facility, and may only be imported through certain ports (Los Angeles, CA, Miami, FL, or New York, NY). The regulations have also prohibited the importation of birds that have been vaccinated against Newcastle virus. While the regulations do not explicitly prohibit the importation of live birds or poultry from countries where END or HPAI is considered to exist, APHIS has been effectively prohibiting such imports by denying import permits under § 93.103(a)(2)(i) and § 93.204(a)(2), which allow a permit to be denied based on communicable disease conditions in the area or region of origin.

*Changes Affecting the Importation of Live Birds and Poultry*

This interim rule makes several changes to the requirements for importing live birds and poultry to improve protection against the introduction of all subtypes of HPAI.

First, we are prohibiting the entry of live birds or poultry that have been vaccinated for any H5 or H7 subtype of avian influenza. The prohibition will also apply to hatching eggs [1] that were laid by birds or poultry vaccinated for the H5 or H7 subtypes of avian influenza. The current prohibition in the regulations applies only to birds (including hatching eggs) that have been vaccinated for Newcastle disease.

The changes we are making are based on our emergency preparedness plans for HPAI and the experience we gained following the 2004 outbreak of H5N2 in Gonzales County, TX. The preparedness plan is based on the best available science and developed in consultation with academic and industry experts. We have adopted a policy that reserves the use of H5 or H7 AI vaccines for control of HPAI outbreaks with the intent to implement vaccination on a strategic basis and under the supervision or control of USDA as part of an official USDA animal disease control program.

The regulations in § 93.106 and § 93.209 require that birds and poultry be quarantined in an approved facility for at least 30 days after importation into the United States and tested during quarantine for communicable diseases of poultry. Such testing now includes testing for all subtypes of avian influenza. Vaccination for H5 or H7 strains of avian influenza could mask the presence of infection in imported birds, and vaccinated birds would have antibodies to H5 or H7 that would be detected during quarantine or routine surveillance, resulting in the birds being handled as if they were infected.

Therefore, we are adding two new requirements addressing vaccination to Subpart A—Birds and Subpart B—Poultry in part 93. There is currently a statement in paragraph (b)(4) of § 93.104, "Certificate for pet birds, commercial birds, zoological birds, and research birds," that requires that the certificate accompanying such birds state that "the birds have not been vaccinated with Newcastle disease vaccine." We are removing the requirement that birds are not vaccinated against Newcastle virus because it is standard practice in the United States. We are changing that required statement to "the birds have not been vaccinated with a vaccine for any H5 or H7 subtype of avian influenza." We are also changing the similar statement contained in the parallel certificate requirement for ratites in § 93.104(c)(5) to read "the ratites have not been vaccinated with a vaccine for any H5 or H7 subtype of avian influenza." We are also adding a statement to § 93.205, "Certificate for poultry," to read "The certificate shall also state that the poultry have not been vaccinated with a vaccine for any H5 or H7 subtype of avian influenza." A complementary sentence is added to § 93.205(b) addressing poultry hatching eggs, requiring that the certificate accompanying them to state that "the hatching eggs are from poultry that have not been vaccinated with a vaccine for any H5 or H7 subtype of avian influenza." These new certificate statement requirements are expected to add a recordkeeping burden of about 30 minutes for each of the approximately 718 certificates obtained each year, or a total burden of about 358 hours. These changes will effectively prohibit the importation of any live birds or live poultry that have been vaccinated for any H5 or H7 subtype of avian influenza, including hatching eggs from such birds.

Second, we are prohibiting the importation into the United States of live birds or poultry that transit regions where HPAI of any subtype is considered to exist. Live birds and poultry cannot be kept in completely sealed containers or otherwise protected from contamination during shipment to the United States. The World Organization for Animal Health (the OIE) has found that secondary spread of avian influenza viruses is mainly by mechanical transfer of infective faeces, in which virus may be present at high concentrations and may survive for considerable periods and that the virus may be spread by birds or other animals that are not themselves susceptible to infection that become contaminated through contact with infected birds in transit.[2] Water or feed present during transit may also become contaminated. In some cases caretakers, farm owners and staff, and trucks and drivers moving birds or delivering food have been implicated in the spread of virus. Consequently, there are significant risks

[1] Hatching eggs are eggs intended and used for hatching, and do not include embryonated eggs for consumption, such as balut eggs.

[2] *See, e.g.,* World Organization for Animal Health, Draft Report of the Meeting of the OIE Ad Hoc Group on Avian Influenza, Paris, 12–14 November 2003.

of live birds or poultry contracting HPAI if allowed to move through regions where HPAI is considered to exist en route to the United States.

We are making this change in § 93.104, "Certificate for pet birds, commercial birds, zoological birds, and research birds," which describes the certificate requirements for live poultry, live birds, and hatching eggs imported into the United States, and in § 93.205, "Certificate for poultry," which describes the certificate requirements for imported live poultry and hatching eggs. We are adding language to paragraphs (b)(6) and (c)(7) of § 93.104, and to paragraphs (a) and (b) of § 93.205 to require that the certificate must state that the live poultry or birds it applies to have not been moved through a region identified in accordance with § 94.6(a) as a region where any form of highly pathogenic avian influenza exists.

Third, we are redescribing the applicability of the requirements in § 93.101(c)(3) and (f)(3) for importing pet and theatrical birds. These paragraphs currently require importation only through certain ports and quarantine for any U.S. origin pet birds or performing or theatrical birds or poultry that are returning to the United States and that have been in any region where HPAI subtype H5N1 exists. This requirement will now apply to such birds that have been in any region where HPAI of any subtype exists. This change is consistent with the other changes in this rule that apply requirements equally whether HPAI subtype H5N1 or other subtypes are involved.

*Bird and Poultry Products and Byproducts*

Prior to this interim rule, the regulations in part 94, § 94.6, restricted the importation of carcasses, parts of products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, and other birds, from regions where END or HPAI subtype H5N1 are considered to exist.

Paragraph (a)(1) of § 94.6 stated that END is considered to exist in all regions of the world except those listed in paragraph (a)(2) of that section. Paragraph (a)(2) listed regions considered to be free of END, based on evaluations by APHIS.

Paragraph (b) of § 94.6 contained requirements for importations from regions where END is considered to exist. Paragraph (b) provided that (except for game birds, which are eligible for importation if eviscerated, with heads and feet removed) carcasses and parts or products of carcasses may be imported only for consignment to an approved establishment, or if they are packed in hermetically sealed containers and cooked by a commercial method after such packing such that they are shelf stable without refrigeration, or if they have been thoroughly cooked. Paragraph (b) also contained provisions for the importation of poultry carcasses or parts or products of carcasses that originate in a region free of END and are then processed in a region where END is considered to exist. Additionally, paragraph (b) contained provisions for the importation under permit of carcasses or parts or products of carcasses of poultry, game birds, or other birds that do not otherwise meet the requirements of paragraph (b), when the Administrator determines that such importation will not constitute a risk of introducing or disseminating END into the United States.

Paragraph (c) of 94.6 contained requirements for importing eggs (other than hatching eggs) from poultry, game birds, or other birds if the birds or poultry were raised in any region where END is considered to exist, if the eggs are imported from any region where END is considered to exist, or if the eggs are moved into or through any region where END is considered to exist at any time before importation or during shipment to the United States. Paragraph (c) provided that the eggs may be imported with a certificate that contains information documenting that the eggs do not present a risk of introducing END; or the eggs may be imported into an approved establishment for breaking and pasteurization; or the eggs may be imported into an approved establishment for scientific, educational, or research purposes. Additionally, paragraph (c) contained provisions for the importation under permit of eggs (other than hatching eggs) that do not otherwise meet the requirements of paragraph (c), when the Administrator determines that such importation will not constitute a risk of introducing END into the United States.

Paragraph (d) of § 94.6 listed regions where HPAI subtype H5N1 is considered to exist. Paragraph (e) of § 94.6 contained requirements for importing unprocessed carcasses and parts or products of unprocessed carcasses of poultry, game birds, or other birds from regions where HPAI subtype H5N1 is considered to exist. Paragraph (e) provided that such unprocessed products could only be imported under permit for scientific, educational, or research purposes and if the Administrator had determined that such importation could be made under conditions that will prevent the introduction of HPAI subtype H5N1. Such conditions are specified in the permit.

Although prior to this interim rule, § 94.6(b) applied only to carcasses and parts or products of carcasses of poultry, game birds, or other birds from regions where END is considered to exist, similar restrictions have been in general use among nations engaged in international trade of poultry products to prevent the introduction of both END and HPAI. Moreover, to date, all foreign regions where HPAI is considered to exist are also regions where END is considered to exist, so the restrictions have been applied *de facto* with regard to both diseases.

However, APHIS expects that, over time, additional regions will be determined to be free from END, and some regions where END was considered to exist may successfully eradicate the disease and then be determined free from END. In such cases, import restrictions based on the presence of END would no longer apply to the regions, and, thus, would no longer protect against HPAI if it exists in the region. There is also a recent apparent increase in HPAI outbreaks worldwide and HPAI may become established in a region where END has never existed, resulting in an increasing threat of introducing HPAI into the United States through imported poultry or poultry products. Although we could take immediate action as outbreaks occur to issue Federal emergency action orders to prohibit the importation of birds and poultry and bird and poultry carcasses, or parts or products of carcasses, from such regions under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), we have determined that we need to establish regulatory safeguards that will be triggered by the discovery of an outbreak of any form of HPAI in commercial birds or poultry in a region, irrespective of whether END exists in the region.

*Changes Affecting the Importation of Bird and Poultry Products and Byproducts*

This interim rule explicitly applies the END provisions in current § 94.6(b)(3), (b)(4), and (b)(5) that apply to bird and poultry carcasses, and parts or products of carcasses, from regions where END exists to regions where any subtype of HPAI is considered to exist. Paragraphs (b)(3) and (b)(4) of § 94.6 require the products to be cooked in a manner that destroys the HPAI virus. Paragraph (b)(5) addresses products that originate in a region free of END and are

then processed in a region not considered free of the disease. It allows products from free regions to be processed in regions not considered free under conditions designed to prevent contamination of the products.

This interim rule does not apply the END provisions in § 94.6(b)(1) regarding game birds to HPAI regions. This paragraph states that carcasses of game birds may be imported from an END region if eviscerated, with heads and feet removed. We do not believe we have enough information at this time to conclude that this END-based restriction would also control HPAI. As discussed later in this document, we are requesting public comment on this issue. To make it clear that this interim rule paragraph does not allow importation of carcasses of game birds from regions where HPAI exists, it adds the following sentence to § 94.6(b)(1): "Carcasses of game birds may not be imported from regions where HPAI is considered to exist."

In connection with the changes related to HPAI, we are establishing a list of regions where HPAI of any subtype exists. This list is discussed in more detail below under the heading "The Lists of Regions." Note that we are creating a single list of regions where any subtype of HPAI is considered to exist because we are applying the same conditions to importations from regions where HPAI subtype is considered to exist, regardless of the subtype of HPAI.

*Processed Carcasses, and Parts or Products of Carcasses*

In addition to applying certain requirements in § 94.6(b), "Carcasses, and parts or products of carcasses, from regions where END is considered to exist," to HPAI as well as END, we are making one substantive change, concerning cooking, to these requirements.

Prior to this interim rule, paragraph (b)(4) of § 94.6 required that cooked carcasses, parts, or products of poultry or other birds from END regions "have a thoroughly cooked appearance throughout." In adapting this requirement to apply to both END and HPAI, we are changing the requirement to read that the articles must be "cooked to reach a minimum internal temperature throughout of 74 °C (165 °F)."

To protect against both END and HPAI, cooking must be sufficient to inactivate the viruses in poultry meat that cause these diseases. The former recommendation by the OIE was for cooking that achieves an internal temperature of 70 °C (158 °F) for 5 seconds, but the 2007 Terrestrial Animal Health Code indicates that a standard of 73.9 °C (165 °F) for 0.51 seconds is equally or more effective.[3] Based on this OIE recommendation and the research supporting it, APHIS is applying this revised cooking standard with regard to both HPAI and END. We are rounding the temperature up from 73.9 °C to 74 °C, to make it more practical for commercial treatment situations, and are eliminating the "for 0.51 seconds" part of the standard because experience monitoring such cooking has shown that if the articles reach any given internal temperature, the temperature will endure for more than half a second. The cooking temperature of 74 °C (165 °F) is based on scientific data regarding the temperature required to inactivate both types of viruses, but also includes a small margin of error with regard to END to allow for the wide variety of commercial cooking practices around the world. Although studies indicate that END can be inactivated at a slightly lower temperature than HPAI, approximately 72 °C (162 °F), having a single standard will make the regulations easier to apply and enforce and will ensure that products from regions where either or both diseases exist do not present a risk of introducing either disease. Setting the same temperature requirement with regard to both diseases also reduces the possibility for processing error that could occur if cooking operations needed to frequently switch between, for instance, the former 70 °C (158 °F) OIE standard still used by some countries, a 72 °C (162 °F) requirement for END, and a 74 °C (165 °F) requirement for HPAI.

The cooking temperatures required to inactivate these viruses are a matter of both regulatory and commercial concern. If the standard is set too low, there is a risk that significant amounts of infectious material may survive cooking. If the standard is set unnecessarily high, it increases the cost for producers and may degrade some products. We do not expect the new standard will significantly increase the cost of required cooking. Various scientific studies[4] are underway to further examine the optimal cooking standards to inactivate END or HPAI viruses in products, and APHIS may revisit this standard if new information indicates a need to do so. Therefore, we particularly invite public comment on this issue.

*The Lists of Regions*

Prior to this interim rule, § 94.6(a)(1) and (a)(2) identified regions where END is considered to exist and regions that are considered to be free of END, respectively.

We are consolidating paragraphs (a)(1) and (a)(2) into a single paragraph (a)(1). We are also taking this opportunity to add to § 94.6(a)(1) a sentence explaining that a region on this list that is removed due to an outbreak of END may be returned to the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4. This information does not add any new requirements regarding END; it merely refers to another section of the regulations that is relevant to determining a region's disease status.

We are also adding a new paragraph (a)(2) that establishes a list of regions in which HPAI of any subtype is considered to exist. This list will include all regions where we consider HPAI subtype H5N1 to exist: Afghanistan, Albania, Azerbaijan, Bangladesh, Benin, Burkina Faso, Cambodia, Cameroon, China, Djibouti, Egypt, Ghana, Hong Kong, India, Indonesia, Iran, Iraq, Israel, Ivory Coast (Côte d'Ivoire), Japan, Jordan, Kazakhstan, Kuwait, Laos, Malaysia, Myanmar, Nepal, Niger, Nigeria, Pakistan, Palestinian Autonomous Territories, Romania, Russia, Saudi Arabia, South Korea, Sudan, Thailand, Togo, Turkey, Ukraine, and Vietnam. We are removing the list of regions where HPAI subtype H5N1 is considered to exist in § 94.6(d) because it is no longer needed. These changes consolidate into § 94.6(a) all the listings of the disease status of regions for END and HPAI, making § 94.6 easier to follow.

Unlike paragraph (a)(1), which maintains a list of regions in the CFR, new paragraph (a)(2) for HPAI of any subtype will refer to a list that APHIS will maintain on its Web site. Copies of the list will also be available via postal mail, fax, or e-mail upon request to APHIS, Veterinary Services, National Center for Import and Export. Paragraph (a)(2)(ii) describes the procedures for adding regions to and removing regions from the list. The public will have the opportunity to comment on any changes to the list.

The purpose of maintaining the list on the Web site is to maintain the most accurate, up-to-date list possible in a location where affected parties can easily view recent changes. The Web

[3] OIE, Terrestrial Animal Health Code 2007, Appendix 3.6.5, "Guidelines for the Inactivation of the Avian Influenza Virus"; *http://www.oie.int/eng/normes/mcode/code2007/en_chapitre_3.6.5.htm.*

[4] *E.g.,* Thomas, C., King, D.J., Swayne, D.E. 2008. Thermal inactivation of avian influenza and Newcastle disease viruses in chicken meat. Journal of Food Protection. 71(6):1214–1222.

site list should be particularly useful when a new region is added to the list, which occurs immediately after APHIS receives reliable reports of a new outbreak. Changes to lists maintained in the CFR are typically not published until days or even weeks after APHIS determines a region should be added to the list. As discussed in more detail below under the heading "Related Issues on Which APHIS is Seeking Comment," we particularly invite commenters to address whether this approach should also be used not only for the new HPAI list of regions, but also with regard to the END list of regions in § 94.6(a)(1).

A region will be added to the list of regions where HPAI exists when APHIS receives reports of outbreaks of the disease in commercial birds or poultry in the region from veterinary officials of the national government of the region and/or the World Organization for Animal Health (the OIE). The Administrator of APHIS may also add a region to the list based on outbreak reports he or she receives from other sources the Administrator determines to be reliable; *e.g.,* reports from APHIS inspectors based in foreign countries. This last means of adding regions to the list allows APHIS to take prompt action as soon as it reliably learns of an outbreak, even before reports have been received and referred by the exporting country's animal health agency or the OIE. This is the same basis APHIS has used to remove regions from the list of regions considered free of END, and to add regions to the list of regions where HPAI subtype H5N1 is considered to exist. The principle is the same for all such lists—the lists are changed as soon as APHIS has reliable reports of an outbreak of the relevant disease in the region.

A region will be removed from the list of regions where HPAI is considered to exist only after APHIS completes an evaluation and makes it available for public comment through a notice published in the **Federal Register**. Following the close of the comment period, we will publish another notice responding to comments and announcing APHIS' decision.

In assessing the region's disease status, APHIS takes into consideration our regulations in Part 92, "Importation of Animals and Animal Products: Procedures For Requesting Recognition of Regions," as well as the standards of the OIE for disease-free status and all relevant information obtained from veterinary authorities in the region and through public comments. Additional information about the information APHIS will review can be found on the APHIS National Center for Import and Export Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml*.

Prior to this interim rule, the regulations in § 95.30 provided that products and byproducts of poultry, game birds, or other birds from regions where HPAI subtype H5N1 is considered to exist could only be imported under permit and in accordance with conditions specified in the permit to prevent the introduction of HPAI subtype H5N1 into the United States. This section covers feathers, birds' nests, bird trophies, and other products and byproducts not suitable for human consumption, whereas the regulations in part 94 generally cover meat and other products suitable for human consumption. This interim rule applies the regulatory requirements in this section to all subtypes of HPAI.

*Approved Establishments*

Paragraph (b)(5) of § 94.6 concerns processing of products in foreign regions. A footnote to that paragraph (footnote 5 prior to this interim rule, and renumbered in this interim rule as footnote 7) states that, as a condition of entry into the United States, products must be prepared only in what the footnote calls "approved establishments." Prior to this interim rule, the term "approved establishments" in this footnote referred to establishments approved under the Poultry Products Inspection Act (PPIA, 21 U.S.C. 451 *et seq.*) to prepare food products in accordance with regulations of USDA's Food Safety and Inspection Service (FSIS). To avoid confusion with other uses of the term "approved establishment" in the regulations, we are changing the term that refers to establishments operating under the PPIA to "processing establishment." We believe this change will prevent possible confusion due to the use of the term "approved establishment" in two other paragraphs in § 94.6. In a footnote to § 94.6(b)(2) (footnote 4 prior to this interim rule, and renumbered in this interim rule as footnote 5), the term refers to museums, educational institutions, or other establishments that are approved to receive bird or poultry carcasses for educational purposes. In § 94.6(c)(2), the term refers to establishments that are approved by FSIS for breaking and pasteurization of eggs in a manner that will prevent the spread of disease.

*Products*

We are consolidating into one paragraph the requirements for carcasses and products with regard to both END and HPAI. Paragraph (b) of § 94.6 is therefore retitled "Carcasses, and parts or products of carcasses, including meat, from regions where END or HPAI is considered to exist." As part of this consolidation we are moving the requirements addressing products from a region where HPAI subtype H5N1 is considered to exist from § 94.6(e) into § 94.6(b)(2), which applies to all subtypes of HPAI. Those requirements state that articles from such regions may only be consigned to certain types of establishments approved by the Administrator, must be accompanied by a permit, and must be moved and handled as specified on the permit. We are also removing § 94.6(e), because the requirements of this paragraph have been incorporated into § 94.6(b)(2).

We are adding the word "meat" in several places in § 94.6 where the text has said only "carcasses and parts or products of carcasses." The phrase "carcasses and parts or products of carcasses" includes meat in its meaning, but adding the word makes that clearer. We are also adding text and footnotes to refer readers to part 95 for regulations covering products not intended for human consumption.

*Corresponding Changes in Other Parts of Title 9, Subchapter D*

Finally, in conjunction with the changes to § 94.6 discussed above, we are making several changes to parts 93, 94, and 95 that refer to § 94.6. All but three of these changes simply correct references to § 94.6(d)—the former location of the list of regions in which HPAI subtype H5N1 is considered to exist—to instead read "§ 94.6(a)(2)."

One of the remaining changes is to § 93.205, which contains certificate requirements for live poultry and hatching eggs. We are making nonsubstantive changes to § 93.205 to simplify it slightly and divide it into three subordinate paragraphs for ease in reading.

The remaining two changes address requirements in §§ 93.209(b) and 94.26 that have applied to regions where END is considered to exist. These requirements must now apply to regions where either END or HPAI exist. In § 93.209(b), the relevant requirement is that poultry hatching eggs must be quarantined upon arrival in the United States for at least 30 days, unless they are from a region considered free of END and HPAI. Section 94.26 now requires an additional certification statement and other requirements to import live poultry and other products from certain regions that supplement their meat supply from, or have a common land

border with, regions considered to have either END or HPAI.

*Related Issues on Which APHIS Is Seeking Comment*

There are several additional issues related to HPAI and END for which we are seeking public comment. This interim rule does not make any of the possible changes discussed below, because there are no immediate risks associated with them that would justify immediate action. However, we believe the following changes would improve the effectiveness of our programs to prevent the introduction of HPAI, END, and other poultry diseases.

As discussed above, the new list of regions considered to have HPAI of any subtype will be maintained on the APHIS Web site, not in the CFR. We are also considering listing the regions where END is considered to exist on the Web rather than in the CFR, and we are soliciting public comment on this issue. This change would help us maintain the most accurate, up-to-date list possible in a location where affected parties can easily view recent changes. We would continue to provide an opportunity for public comment on changes to the list. As now, when APHIS determines that a disease is present in a region that presents a potential threat to animal health in the United States, we would take immediate action to restrict imports from that region. However, we would not follow that action with an interim rule in the **Federal Register** (which is necessary to change text in the CFR, where the lists are currently located). Instead, we would list the region on the APHIS Web site, and announce the listing through a notice, rather than a rule, in the **Federal Register**, with an opportunity for public comment. As explained previously with respect to the process for adding or removing a region from the Web list for HPAI, we would consider END to exist in a region when APHIS receives reports of outbreaks of the disease in commercial birds or poultry in the region from veterinary officials of the national government of the region and/or the World Organization for Animal Health (the OIE), or receives reports of an outbreak from another source that the Administrator determines to be reliable; *e.g.,* APHIS inspectors based in foreign countries.

We would add a region to the list of those considered to be free of END only after completing an evaluation and making it available for public comment. We would do this through a notice in the **Federal Register**. Following the close of the comment period, we would publish another notice responding to comments and announcing APHIS' decision.

In assessing the region's disease status, APHIS would take into consideration the same information it does now—our region recognition standards in part 92, the standards of the OIE for disease-free status, and all relevant information obtained from veterinary authorities in the region and through public comments. Additional information about the factors APHIS reviews to determine a region's END and HPAI statuses may be found on the APHIS National Center for Import and Export Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml*.

After evaluating public comments received on this issue in response to this interim rule, we may publish a final rule to establish a Web site list of regions' disease status for END. That final rule would also remove the END list from § 94.6(a)(1). We would at that time also name the regions included in the END Web site list, including any regions that have been added based on reports of END outbreaks since the last time the list was amended in the CFR.

We also seek public comment on whether and how to change paragraph (c) of § 94.6 to address risks associated with importing table eggs from regions where HPAI is considered to exist. Paragraph 94.6(c) addresses importation of eggs (other than hatching eggs, which are regulated by part 93) from regions where END is considered to exist. It currently authorizes four ways such eggs may be imported, one of which is with a certificate stating that the flocks meet certain disease monitoring and testing requirements. These requirements involve placing sentinel birds in the flock and later testing them for END, or alternatively testing the carcasses of any poultry that die in the flock and also testing at least 10 percent of live birds. We are considering adding HPAI to the coverage of this paragraph, and requiring the appropriate tests and flock surveillance for HPAI where such tests and surveillance are already required for END.

This document does not make any changes to § 94.6(c) related to HPAI because APHIS is still considering issues concerning the importation of table eggs from regions where HPAI is considered to exist, and we are soliciting public comment on the issues. In particular, we seek comments on whether a targeted testing program for HPAI in egg flocks in foreign regions is advisable, and how it could be designed to provide a statistically valid testing regimen. Any comments we receive on this subject will be considered if and when APHIS develops a rule on the subject. Those who wish to comment on this issue should also review a final rule APHIS published in the **Federal Register** on April 22, 2009 ("Importation of Table Eggs from Regions Where Exotic Newcastle Disease Exists," Docket No. APHIS–2007–0014; 74 FR 18285–18288). That document changed § 94.6(c) to create a protocol for targeted END testing of a statistically valid sample of dead, dying, and cull birds. We believe it would also be possible to create such a targeted testing program for HPAI, although the sample sizes, type of tests, and other technical details would vary.

We also seek public comment on whether and how the requirements in § 94.6(b)(1) for importing carcasses of game birds from regions where END exists should be changed. This paragraph primarily affects hunters returning to the United States with game birds they have shot. It allows carcasses of game birds to be imported from regions where END exists if they have been eviscerated and the heads and feet removed. The viscera, heads, and feet may not be imported into the United States. We are seeking comment on whether we should apply the same conditions to importation of carcasses of game birds from regions with HPAI. We further seek comment on whether different requirements should apply to carcasses of game birds depending on whether they are imported from a region with HPAI subtype H5N1, or from a region with another subtype of HPAI. In your comments, please address how any such requirement would address the risks of spreading HPAI associated with importing carcasses of game birds.

**Immediate Action**

This action is necessary to ensure continuing protection against the introduction of HPAI into the United States. All subtypes of HPAI are threats to U.S. poultry industries, and current regulations do not directly address all subtypes of HPAI, relying instead on the overlapped protection afforded by END restrictions. However, continuing rapid changes in world trade patterns make it likely that eventually poultry products may be imported from a region with HPAI but without END. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for

this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

**Executive Order 12866 and Regulatory Flexibility Act**

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

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Order 12866, and an initial regulatory flexibility analysis that examines the potential economic effects of this interim rule on small entities, as required by the Regulatory Flexibility Act. The economic 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 economic analysis is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this document).

This rule amends the regulations concerning the importation of animals and animal products to prohibit or restrict the importation of live birds and poultry and bird and poultry products from regions where any subtype of highly pathogenic avian influenza is considered to exist. The rule also adds restrictions concerning importation of live poultry and birds that have been vaccinated for the H5 and H7 subtypes of avian influenza, or that have moved through regions where any subtype of HPAI is considered to exist. These restrictions supplement existing restrictions on the importation of live birds and poultry, and bird and poultry products and byproducts from regions where exotic Newcastle disease or HPAI subtype H5N1 are considered to exist. They are necessary to prevent the introduction of HPAI into the United States.

Because of the current substantial overlap between existing restrictions to prevent the importation of articles that could introduce END and the new restrictions to prevent the importation of articles that could spread HPAI, this rule is not expected to cause significant economic effects. The effects it does have benefit domestic poultry producers and the associated costs should be borne largely by importers of poultry and poultry products.

Based on the domestic production and trade volumes, the interim rule is likely to benefit producers by protecting domestic flocks against the introduction of HPAI, while effects on consumers are expected to be negligible. The costs of complying with the requirements of the rule will largely be borne by persons importing poultry and poultry products into the United States. We do not expect small entities to be significantly affected by the interim rule, other than to benefit from the reduced risk of introduction into the United States of HPAI. Overall, the restrictions placed on imports of birds, poultry, and bird and poultry products will closely follow those already in place for END. The only substantive change will affect certain cooked poultry products with a requirement that cooked poultry carcasses or parts or products of carcasses be heated to a minimum internal temperature of 74 °C (165 °F) before shipment to the United States.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Has no retroactive effect and (2) 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 0579–0367 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. APHIS–2006–0074, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. APHIS–2006–0074 and send your comments within 60 days of publication of this rule.

This interim rule affects the importation of birds and poultry and bird and poultry products from regions where any subtype of HPAI is considered to exist. The rule includes information collection activities. In many cases the information collection activities with regard to HPAI are already occurring because the countries involved have END. New information collections will generally occur only when products are imported from a country where HPAI is considered to exist but END is not considered to exist. Such cases should be rare, but when they do occur the information collections are associated with certificates and with recordkeeping required for processing facilities.

In addition, this rule requires an additional statement on the certificate already required by § 93.104 for imported live birds and by § 93.205 for imported live poultry. That certificate must now contain an additional statement that the poultry it applies to have not been moved through a region considered to have any subtype of HPAI. Also, the certificate currently required by § 94.26 to import live poultry and other products from certain regions that supplement their meat supply from, or have a common land border with, regions considered to have END will now also be required for imports from regions considered to have HPAI.

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 0.4986072 hours per response.

*Respondents:* U.S. importers, owners or operators of establishments that handle restricted or controlled materials, and foreign animal health authorities.

*Estimated annual number of respondents:* 416.

*Estimated annual number of responses per respondent:* 1.7259615.

*Estimated annual number of responses:* 718.

*Estimated total annual burden on respondents:* 358 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

**E-Government Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

**List of Subjects**

*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.

Accordingly, we are amending 9 CFR parts 93, 94, and 95 as follows:

## 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

■ 1. 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.

■ 2. Section 93.101 is amended as follows:

■ a. In paragraph (a), by adding a new sentence at the end of the paragraph to read as set forth below.

■ b. In paragraphs (c)(2)(i) introductory text, (c)(2)(ii) introductory text, and (c)(2)(ii)(E)(*2*)(*ii*), by removing the words "subtype H5N1" each time they appear.

■ c. In paragraph (c)(3), by removing the words "listed in § 94.6(d) of this subchapter as a region where highly pathogenic avian influenza subtype H5N1" and adding the words "identified in accordance with § 94.6(a)(2) of this subchapter as a region where highly pathogenic avian influenza" in their place.

■ d. In paragraphs (f)(2) introductory text and (f)(2)(iii)(B)(*2*), by removing the words "subtype H5N1" each time they appear.

■ e. In paragraph (f)(3), by removing the words "listed in § 94.6(d) of this subchapter as a region where highly pathogenic avian influenza subtype H5N1" and adding the words "identified in accordance with § 94.6(a)(2) of this subchapter as a region where highly pathogenic avian influenza" in their place.

**§ 93.101 General prohibitions; exceptions.**

(a) * * * No live birds, and no hatching eggs from birds, shall be imported into the United States if the birds have been vaccinated for the H5 or H7 subtype of avian influenza.

* * * * *

**§ 93.104 [Amended]**

■ 3. Section 93.104 is amended as follows:

■ a. In paragraph (b)(4), by removing the words "Newcastle disease vaccine" and adding the words "with a vaccine for the H5 or H7 subtype of avian influenza" in their place.

■ b. In paragraph (b)(6), by adding the words ", and that the birds have not been moved through a region identified in accordance with § 94.6(a) of this subchapter as a region where highly pathogenic avian influenza exists" immediately after the words "exportation of the birds".

■ c. In paragraph (c)(5), by adding the words "or with a vaccine for the H5 or H7 subtype of avian influenza" immediately after the word "vaccine".

■ d. In paragraph (c)(7), by adding the words ", and that the ratites have not been moved through a region identified in accordance with § 94.6(a) of this subchapter as a region where highly pathogenic avian influenza exists" immediately after the word "exportation".

■ 4. Section 93.201 is amended as follows:

■ a. In paragraph (a), by adding a new sentence at the end of the paragraph to read as set forth below.

■ b. In paragraphs (c)(2) and (c)(3), by removing the words "subtype H5N1" each time they appear.

**§ 93.201 General prohibitions; exceptions.**

(a) * * * No live poultry, and no hatching eggs from poultry, shall be imported into the United States if the poultry have been vaccinated for the H5 or H7 subtype of avian influenza.

* * * * *

■ 5. Section 93.205 is revised to read as follows:

**§ 93.205 Certificate for live poultry and hatching eggs.**

(a) *Live poultry.* All live poultry, except eggs for hatching, offered for importation from any region of the world shall be accompanied by a certificate stating that such poultry and their flock or flocks of origin were inspected on the premises of origin immediately before the date of movement from such region and that they were then found to be free of evidence of communicable diseases of poultry. The certificate shall also state that, as far as it has been possible to determine, during the 90 days prior to movement, the poultry were not exposed to communicable diseases of poultry and the premises were not in any area under quarantine. The certificate shall also state that the poultry have not been vaccinated with a vaccine for the H5 or H7 subtype of avian influenza. The certificate shall also state that the poultry have been kept in the region from which they are offered for importation since they were hatched, or for at least 90 days immediately preceding the date of movement, that the poultry have not been moved through a region identified in accordance with § 94.6(a) of this subchapter as a region where any form of highly pathogenic avian influenza exists, and that, as far as it has been possible to determine, no case of European fowl pest (fowl plague) or Newcastle disease occurred on the premises where such poultry were kept, or on adjoining premises, during that 90-day period.

(b) *Hatching eggs.* All eggs for hatching offered for importation from any part of the world shall be accompanied by a certificate stating that the flock or flocks of origin were found upon inspection to be free from evidence of communicable diseases of poultry, the hatching eggs are from poultry that have not been vaccinated with a vaccine for the H5 or H7 subtype of avian influenza and that during the

90 days prior to movement, the flock or flocks of origin were not exposed to communicable diseases of poultry and the premises were not in any area under quarantine.

(c) *Nature of certificate.* The certificate required by this section shall be issued by a salaried veterinary officer of the national government of the region of origin, or if the articles are exported from Mexico, may alternatively be issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so.

**§ 93.209 [Amended]**

■ 6. In § 93.209, paragraph (b) is amended by removing the words "designated in § 94.6(a)(2) of this subchapter as free of exotic Newcastle disease" and adding the words "designated in § 94.6(a) of this subchapter as free of exotic Newcastle disease and highly pathogenic avian influenza" in their place.

## PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 7. 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.

**§§ 94.8, 94.9, 94.12, 94.16, 94.17, 94.18, and 94.24 [Amended]**

■ 8. Sections 94.8, 94.9, 94.12, 94.16, 94.17, 94.18, and 94.24 are amended by redesignating footnotes 7 through 20 as footnotes 8 through 21, respectively.

■ 9. Section 94.6 is amended as follows:

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

■ b. In paragraph (b), by removing footnotes 4 and 5.

■ c. In paragraph (c), by redesignating footnote 6 as footnote 7.

■ d. By revising paragraphs (a) and (b) to read as set forth below.

■ e. By removing paragraphs (d) and (e) and redesignating paragraph (f) as paragraph (d).

■ f. By revising the OMB citation at the end of the section to read as set forth below.

**§ 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 exotic Newcastle disease or highly pathogenic avian influenza is considered to exist.**

(a) *Disease status of regions for exotic Newcastle disease (END) and highly pathogenic avian influenza (HPAI).*

(1) *Regions in which END is not considered to exist.* (i) END is considered to exist in all the regions of the world except the following: Argentina, Australia, Canada, Chile, Costa Rica, Denmark, Fiji, Finland, France, Great Britain (England, Scotland, Wales, and the Isle of Man), Greece, Iceland, Luxembourg, Mexico (States of Campeche, Quintana Roo, and Yucatan), New Zealand, Republic of Ireland, Spain, Sweden, and Switzerland. APHIS has evaluated these regions for the presence of END. Regions not listed may have END, or may not have been evaluated for END status.

(ii) APHIS will remove a region from the list in paragraph (a)(1)(i) of this section upon determining that END exists there based on reports APHIS receives of outbreaks of the disease in commercial birds or poultry from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. APHIS will add a region to this list after it conducts an evaluation of the region and finds that END is not likely to be present in its commercial bird or poultry populations. In the case of a region formerly on this list that is removed due to an outbreak, the region may be returned to the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

(2) *Regions in which HPAI is considered to exist.* (i) A list of such regions is maintained on the APHIS National Center for Import and Export Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or e-mail upon request to Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737.

(ii) APHIS will consider a region to have HPAI and add it to this list referenced in paragraph (a)(2)(i) of this section upon determining that HPAI exists in commercial birds or poultry in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the OIE, or from other sources the Administrator determines to be reliable. APHIS will remove a region from this list only after it conducts an evaluation of the region and finds that HPAI is not likely to be present in its commercial bird or poultry populations.

(b) *Carcasses, and parts or products of carcasses, including meat, from regions where END or HPAI is considered to exist.* This paragraph applies to carcasses, and parts or products of carcasses,[4] including meat, of poultry, game birds, or other birds that were raised or slaughtered in any region where END or any subtype of HPAI is considered to exist (*see* paragraph (a) of this section); are imported from any such region; or are moved into or through any such region at any time before importation or during shipment to the United States.

(1) Carcasses of game birds, if eviscerated with heads and feet removed, may be imported from regions where END is considered to exist. Carcasses of game birds may not be imported from regions where any subtype of HPAI is considered to exist. Viscera, heads, and feet removed from game birds in any of these regions are ineligible for entry into the United States.

(2) Carcasses, or parts or products of carcasses, of poultry, game birds, and other birds may be imported for consignment to any museum, educational institution or other establishment which has provided the Administrator with evidence that it has the equipment, facilities, and capabilities to store, handle, process, or disinfect such articles so as to prevent the introduction or dissemination of END or HPAI into the United States, and which is approved by the Administrator.[5]

(3) Carcasses, or parts or products of carcasses, including meat, of poultry, game birds, or other birds, may be imported if packed in hermetically sealed containers and if cooked by a commercial method after such packing to produce articles that are shelf stable without refrigeration.

(4) Carcasses and parts or products of carcasses, including meat, of poultry, game birds, or other birds, may be imported if they are accompanied by a certificate that is signed by a full-time, salaried veterinarian of the government agency responsible for animal health in

[4] Animal byproducts are regulated under part 95 of this subchapter.

[5] The names and addresses of approved establishments may be obtained from, and requests for approval may be made to the National Center for Import-Export, Veterinary Services, APHIS, 4700 River Road, Unit 38, Riverdale, Maryland 20737–1231.

the region and that specifies that the articles were cooked throughout to reach a minimum internal temperature of 74 °C (165 °F).

(5) Carcasses, and parts or products of carcasses, including meat, of poultry, game birds, or other birds, that originated in a region considered to be free of END and any subtype of HPAI, and that are processed (cut, packaged, or other processing) in a region where END or HPAI is considered to exist, may be imported under the following conditions:

(i) *Shipment to processing establishments.* All poultry, game bird, or other bird products from such regions shall be shipped from the END and HPAI-free region where they originated to a processing establishment [6] in the region where END or HPAI is considered to exist in closed containers sealed with serially numbered seals applied by an official of the national government of that region. They must be accompanied by a certificate that is signed by a full-time, salaried veterinarian of the government agency responsible for animal health in the region and that specifies the products' region of origin, the processing establishment to which the carcasses or parts or products are consigned, and the numbers of the seals applied to the shipping containers.

(A) The poultry, game bird, or other bird carcasses or parts or products may be removed from containers at the processing establishment in the region where END or HPAI is considered to exist only after an official of the national government has determined that the seals are intact and free of any evidence of tampering. The official must attest to this fact by signing the certificate accompanying the shipment.

(B) [*Reserved*]

(ii) *Handling of poultry, game bird, or other bird carcasses or parts or products.* Establishments in regions where END or HPAI is considered to exist that process poultry, game bird, or other bird carcasses or parts or products for export to the United States:

(A) May not receive or handle any live poultry or birds.

(B) Must keep any records required by this section on file at the facility for a period of at least 2 years after export of processed products to the United States, and must make those records available to USDA inspectors during inspections.

(C) May process carcasses or parts or products that originate in any region, provided that:

(*1*) All areas, utensils, and equipment likely to contact the carcasses or parts or products to be processed, including skinning, deboning, cutting, and packing areas, are cleaned and disinfected between processing carcasses or parts or products from regions where END or HPAI is considered to exist and processing those from END and HPAI-free regions.

(*2*) Carcasses or parts or products intended for export to the United States are not handled, cut, or otherwise processed at the same time as any carcasses or parts or products not eligible for export to the United States.

(*3*) Carcasses or parts or products intended for export to the United States are packed in clean new packaging that is clearly distinguishable from that containing any carcasses or parts or products not eligible for export to the United States.

(*4*) Carcasses or parts or products are stored in a manner that ensures that no cross-contamination occurs.

(iii) *Cooperative service agreement.* Operators of processing establishments must enter into a cooperative service agreement with APHIS to pay all expenses incurred by APHIS in inspecting the establishment. APHIS anticipates that such inspections will occur once a year. The cooperative service account must always contain a balance that is at least equal to the cost of one inspection. APHIS will charge the cooperative service account for travel, salary, and subsistence of APHIS employees, as well as administrative overhead and other incidental expenses (including excess baggage charges up to 150 pounds).

(iv) *Shipment to the United States.* Poultry, game bird, or other bird carcasses or parts or products to be imported into the United States must be shipped from the region where they were processed in closed containers sealed with serially numbered seals applied by an official of the national government of that region. The shipments must be accompanied by a certificate signed by an official of the national government of the region where articles were processed that lists the numbers of the seals applied and states that all of the conditions of this section have been met. A copy of this certificate must be kept on file at the processing establishment for at least 2 years.

(6) Poultry, game bird, or other bird carcasses or parts or products that do not otherwise qualify for importation under paragraphs (b)(1) through (5) of this section may be imported only if the importer applies to, and is granted a permit by, the Administrator, authorizing such importation. A permit will be given only when the Administrator determines that such importation will not constitute a risk of introduction or dissemination of END or HPAI into the United States. Application for a permit may be made in accordance with paragraph (d) of this section.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0015, 0579–0245, 0579–0328, and 0579–0367)

**§ 94.9 [Amended]**

■ 10. Section 94.9 is amended by revising newly redesignated footnote 12 to paragraph (e)(2) introductory text to read "[12] See footnote 9."

**§ 94.12 [Amended]**

■ 11. Section 94.12 is amended by revising newly redesignated footnote 14 to paragraph (b)(3) to read "[14] See footnote 11."

**§ 94.17 [Amended]**

■ 12. Section 94.17 is amended by revising newly redesignated footnote 17 to paragraph (p)(1) introductory text to read "[17] See footnote 16."

**§ 94.26 [Amended]**

■ 13. Section 94.26 is amended as follows:

■ a. In the introductory text, by removing the citation "§ 94.6(a)(2)" and adding the citation "§ 94.6(a)(1)" in its place.

■ b. In paragraph (b) introductory text, (c)(1), and (c)(4), by removing the words "§ 94.6 as free of END" each time they appear and adding the words "§ 94.6(a) as free of END and highly pathogenic avian influenza" in their place.

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

■ 14. 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.

**§ 95.30 [Amended]**

■ 15. Section 95.30 is amended as follows:

■ a. In the section heading and paragraph (a), by removing the words "subtype H5N1" each time they appear.

[6] As a condition of entry into the United States, poultry species and poultry products addressed by the Poultry Products Inspection Act (PPIA, 21 U.S.C. 451 *et seq.*) and regulations thereunder (9 CFR, chapter III, part 381), must also meet all of the requirements of the PPIA and part 381, including requirements that the poultry or poultry products be prepared only in establishments approved by FSIS. Species subject to these requirements include chickens, turkeys, ducks, geese, guineas, ratites, or squabs.

■ b. In paragraph (a), by removing the words "listed in § 94.6(d)" and adding the words "identified in accordance with § 94.6(a)(2)" in their place.

Done in Washington, DC this 12th day of January 2011.

**Edward M. Avalos,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 2011–1289 Filed 1–21–11; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0054; Directorate Identifier 2010–CE–070–AD; Amendment 39–16582; AD 2011–01–53]**

**RIN 2120–AA64**

## Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes. This AD supersedes Emergency AD 2011–01–51, requires an immediate functional test of the fuselage drain holes, and requires sending a report of the results to the FAA. This AD also allows, with noted exceptions, for the return/position of the airplane to a home base, hangar, maintenance facility, *etc.* This AD was prompted by reports of water accumulation in the belly of the fuselage that froze and caused the flight controls to jam. We are issuing this AD to prevent water or fluid from accumulating in the belly of the fuselage and freezing when the aircraft reaches and holds altitudes where the temperature is below the freezing point. This condition could cause the flight controls to jam with consequent loss of control.

**DATES:** This AD is effective January 24, 2011 to all persons except those persons to whom it was made immediately effective by Emergency AD 2011–01–53, issued on December 20, 2010, which contained the requirements of this amendment.

We must receive comments on this AD by March 10, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations Office (*phone:* 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, FAA, 901 Locust, Kansas City, MO 64106; *phone:* (816) 329–4144; *fax:* (816) 329–4090; *e-mail: mike.kiesov@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, is considered the State of Design for PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 airplanes. A reported occurrence of the flight controls jamming on a Model PIAGGIO P–180 airplane prompted EASA to issue AD No. 2007–0025, dated February 1, 2007. This prompted the FAA to issue AD 2007–24–15, Amendment 39–15281 (72 FR 67843, December 3, 2007). AD 2007–24–15 requires correcting the fuselage drain system and ensuring that the drain lines of the environmental unit condenser are not clogged.

Since AD 2007–24–15 became effective, we received reports of two additional incidences of water accumulating in the belly of the fuselage that froze and caused the flight controls to jam on Model PIAGGIO P–180 airplanes. These reports prompted us to issue Emergency AD 2011–01–51 on December 18, 2010, to require an immediate functional test of the fuselage drain holes and submitting a report of the results to the FAA. It also allows, with noted exceptions, for the return/position of the airplane to a home base, hangar, maintenance facility, *etc.*

After we issued Emergency AD 2011–01–51, we realized that we inadvertently omitted figure 2 in Appendix 1. This prompted us to supersede Emergency AD 2011–01–51 and issue Emergency AD 2011–01–53.

This condition, if not corrected, could result in water or fluid accumulating in the belly of the fuselage and freezing when the aircraft reaches and holds altitudes where the temperature is below the freezing point, which could cause the flight controls to jam with consequent loss of control.

**FAA's Determination**

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**AD Requirements**

We are superseding Emergency AD 2011–01–51 with a new AD, which was issued as Emergency AD 2011–01–53 on December 20, 2010. This AD retains the actions from Emergency AD 2011–01–51, adds figure 2 to Appendix 1, and corrects other minor typographical errors.

**Interim Action**

We consider this AD interim action. The FAA is working with EASA and PIAGGIO on this unsafe condition. Due to the nature of the immediate safety of flight situation, the FAA is working this AD concurrently with EASA instead of waiting for EASA, as the State of Design, to issue an AD. Thus, this action is considered unilateral AD action.

**FAA's Determination of the Effective Date**

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because water or fluid accumulating in the belly of the fuselage and freezing could cause the flight controls to jam with consequent loss of control. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment.