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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 53

[Docket No. APHIS–2015–0061]

RIN 0579–AE14

Conditions for Payment of Highly Pathogenic Avian Influenza Indemnity Claims

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with changes, an interim rule that amended the regulations pertaining to certain diseases of livestock and poultry to specify conditions for payment of indemnity claims for highly pathogenic avian influenza (HPAI). The interim rule provided a formula allowing us to split such payments between poultry and egg owners and parties with which the owners enter into contracts to raise or care for the eggs or poultry based on the proportion of the production cycle completed. That action was necessary to ensure that all contractors are compensated appropriately. The interim rule also clarified an existing policy regarding the payment of indemnity for eggs destroyed due to HPAI and required a statement from owners and contractors, unless specifically exempted, indicating that at the time of detection of HPAI in their facilities, they had in place and were following a biosecurity plan aimed at keeping HPAI from spreading to commercial premises.

DATES: Effective on August 15, 2018, we are adopting as a final rule the interim rule published at 81 FR 6745–6751, on February 9, 2016. The amendments in this final rule are effective on September 14, 2018.

FOR FURTHER INFORMATION CONTACT: Dr. Denise Brinson, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1506 Klondike Road, Suite 101, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule [1] effective and published in the **Federal Register** on February 9, 2016 (81 FR 6745–6751, Docket No. APHIS–2015–0061), we amended the regulations pertaining to certain diseases of livestock and poultry to specify conditions for payment of indemnity claims for highly pathogenic avian influenza (HPAI). The interim rule provided a formula allowing us to split such payments between poultry and egg owners and parties with which the owners enter into contracts to raise or care for the eggs or poultry based on the proportion of the production cycle completed. That action was necessary to ensure that all contractors are compensated appropriately. The interim rule also provided for the payment of indemnity for eggs required to be destroyed due to HPAI, thus clarifying an existing policy. Finally, the interim rule required owners and contractors, unless specifically exempted, to provide a statement that at the time of detection of HPAI in their facilities, they had in place and were following a biosecurity plan aimed at keeping HPAI from spreading to commercial premises.

Comments on the interim rule were required to be received on or before April 11, 2016. We received 18 comments by that date. They were from industry stakeholders, an animal welfare organization, and individuals. The issues raised by the commenters are discussed below.

Apportionment Formula

A number of commenters expressed concerns about the methodology set out by the interim rule for determining how to apportion funds between owner and contractor. These concerns mostly pertained to equitability and transparency, with some addressing specific sectors of the poultry industry.

Several commenters stated that the formula is flawed because it effectively apportions zero value to the preparatory work done by the contractor prior to the beginning of the production cycle. According to the commenters, contractors incur costs prior to receiving the birds, *e.g.,* for bedding, fuel, and the labor required to prepare the facilities. An indemnity payment, even if made early in the production cycle, may not be sufficient for many contractors to recover these up-front costs.

The Animal Health Protection Act (7 U.S.C. 8301) authorizes the Animal and Plant Health Inspection Service (APHIS) to make payments for birds destroyed due to HPAI based on the fair market value of the birds. While owners and contractors may have additional costs associated with the raising of the birds, the determination of fair market value accounts for the production practices and the inputs necessary to raise the species of bird. The Animal Health Protection Act does not, however, authorize us to cover all losses from HPAI, so costs incurred for certain supplies and labor performed prior to confirmation of disease may not be covered.

One of the commenters cited above further stated that, due to the initial costs contractors incur, losses for a contractor resulting from an outbreak may exceed the value of the flock. In the commenter's view, the distribution formula set out in the February 2016 interim rule does not accurately reflect the relative impacts of an HPAI outbreak on owner and contractor. The commenter recommended that, in determining the value of the loss to the contractor, APHIS should use a 5-flock average for each impacted contractor operation, based on the settlement sheets provided by the owner to the contractor.

The February 2016 interim rule set out a formula whereby the apportionment of indemnity payments to owners and contractors was based on the duration in days of the contract, as signed prior to the disease outbreak. The interim rule did include a provision, however, stating that if determining the length of service contract is impractical or inappropriate, then APHIS may use other methods as deemed appropriate. This provision allows APHIS, when appropriate, to use previous flock averages to assist in determining the contractor's portion of the indemnity payment, as the commenter suggested.

A commenter stated that contractors' loss of income resulting from bird disposal and cleanup following

[1] To view the interim rule, supporting document, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0061.*

depopulation should be factored into our formula. Noting that contractors are often directly involved with the bird disposal, the commenter stated that affected growers will lose not only the income from the flock affected by and destroyed because of HPAI, but also income from one or more flocks that cannot be raised on the premises due to the shutdown time required. While such a shutdown will also impact the owners somewhat, they can minimize economic losses by increasing placement with unaffected contractors. The contractor, who has no such recourse, therefore would bear the greater impact from such a shutdown, a difference that should be reflected in the apportionment of indemnity payments.

Under the Animal Health Protection Act, APHIS can make indemnity payments of up to 100 percent of the fair market value for live birds that must be destroyed because of HPAI. Further, the Act also authorizes APHIS to pay for certain costs associated with cleanup, disinfection, and disposal of birds and materials, such as bedding and litter, as necessary to eliminate the virus. The regulations in 9 CFR 53.2 and 53.7 also provide for such payments. While the Animal Health Protection Act does not allow APHIS to compensate owners and contractors directly for loss of income due to a shutdown of operations, the range of activities for which we do pay indemnities will go some way towards offsetting such costs.

Commenters stated that our indemnity apportionment formula should take the type and age of the birds into account. A standard cost division for all poultry is not equitable, it was suggested, because some birds require more of an investment than others. One commenter stated that specific provisions should be added to the rule to address HPAI losses experienced by breeder hen and pullet contract growers because their flocks are kept for much longer durations than broiler flocks.

These comments appear to be directed more toward our methodology for determining fair market value of the birds rather than the formula we use for apportioning indemnity payments between owners and contractors. The former is beyond the scope of the present rulemaking. That said, our formulas for determining the fair market value of destroyed poultry for the purpose of indemnifying owners and growers already take into account such factors as the type, age, and production potential of the birds. These formulas, also referred to as appraisal calculators, are developed specifically for each segment of the industry and species of bird.

Transparency was another issue raised by the commenters. A commenter suggested that we needed to gather more data in order to devise a fair method of apportioning indemnity payments between owners and contractors. Another commenter suggested that we should update and make more transparent our formulas for calculating indemnities.

We apportion indemnity payments between owner and contractor based on the terms of the contract between the two parties and the duration of the period during which the contractor possessed the birds or eggs. Thus, the amount of the indemnity received by the contractor from APHIS will depend largely on the terms of the contract. APHIS does not play a role in those contractual arrangements. Our indemnity calculation formulas, referred to by the second commenter above, are the means by which we determine the fair market value of birds and eggs destroyed due to HPAI and, thereby, the total amount of compensation due the indemnified party. As we have already noted, addressing these calculators is beyond the scope of the current rulemaking; however, the calculators are subject to continual review to ensure that the economic assumptions on which they are based are correct and that they adequately reflect standard industry practices.

Finally, one commenter stated that APHIS should indemnify farms that are not infected with HPAI but are indirectly affected by an HPAI outbreak. The commenter suggested that such farms may be affected economically by being unable to restock if located in a quarantine or control zone.

The Animal Health Protection Act authorizes APHIS to make payments for birds or eggs destroyed due to HPAI based on their fair market value. APHIS recognizes that some owners and contractors whose flocks do not have HPAI may still have limited ability to place birds or eggs due to movement control restrictions and, consequently, may face financial hardships. However, the Animal Health Protection Act only authorizes payment of indemnity to owners and contract growers of diseased birds or eggs that are destroyed and not to owners or contractors whose premises were only indirectly impacted.

Biosecurity

The February 2016 interim rule contained a requirement stating that, in order to be eligible to receive indemnity payments, both poultry or egg owners and contractors had to provide to APHIS a statement that at the time of detection of HPAI in their facilities, they had in place and were following a biosecurity plan. A list of recommended biosecurity measures was also included, as well as exemptions from the biosecurity statement requirement for certain relatively small facilities. Some commenters questioned whether the requirements were sufficiently stringent overall, while others focused more specifically on the exemptions for smaller facilities.

The various issues raised by these commenters, along with changes we are making in response to some comments, are discussed in detail below. One change we are making for the sake of clarity is to add a definition to § 53.1 of *poultry biosecurity plan,* which we define in this final rule as a document utilized by an owner and/or contractor describing the management practices and principles that are used to prevent the introduction and spread of infectious diseases of poultry at a specific facility.

One commenter stated that self-certification is not a reliable method for ensuring the use of best practices in biosecurity on poultry- or egg-producing premises because the self-certifying owners and growers will have an economic interest in ensuring their certifications. The commenter recommended that APHIS enforce biosecurity requirements by conducting unannounced spot inspections and, when violations are found, subjecting the violators to serious financial consequences.

We believe the commenter has raised some legitimate concerns about the efficacy of self-certification. In this final rule, we are adding provisions for verifying that the owner and/or contractor does have a biosecurity plan in place and that the plan is, in fact, being implemented. Those provisions are discussed in greater detail below.

Some commenters advocated for more rigorous biosecurity requirements. One commenter suggested that even if APHIS declines to do targeted inspections, it should at least require that there is a biosecurity plan in place prior to any HPAI outbreak or destruction of animals. The commenter stated that allowing owners and contractors to meet the requirement after an outbreak would provide a huge economic incentive to misrepresent the state of biosecurity planning at a facility in its attestation. Requiring a biosecurity statement prior to an outbreak, on the other hand, would motivate owners and contractors to address biosecurity planning earlier. Another commenter suggested that facilities subject to the requirement should have had a plan in place for 6 months prior to the outbreak,

have had no lapses during that period, have trained their employees in biosecurity, and be liable for penalties for submitting false claims.

Since the publication of the February 2016 interim rule, we have taken steps to strengthen our biosecurity requirements. In a notice [2] published in the **Federal Register** on May 5, 2017, and effective on July 5, 2017 (82 FR 21187–21188, Docket No. APHIS–2016–0103), we advised the public of our determination to update the National Poultry Improvement Plan (NPIP) Program Standards. The NPIP Program Standards is a document that provides detailed information on how to meet the requirements contained in the NPIP regulations. The NPIP Standards can be amended via notice rather than through a lengthy rulemaking process, thereby providing us with the flexibility to ensure that program requirements remain in sync with current industry practices. The May 2017 final notice followed an earlier notice of availability, upon which we did not receive any public comments. Among other changes, our updates to the NPIP Program Standards included the addition of a set of 14 biosecurity principles addressing such issues as training and biosecurity protocols for farm personnel; maintaining a line of separation between the poultry house(s) and the birds inside from any potential disease sources; control of birds, rodents, and insects; procedures for maintaining clean water supplies; and procedures for auditing biosecurity plans. A facility's biosecurity plan must address all 14 principles in order to ensure that it complies with our requirements.

The auditing process that we have developed as one of the 14 biosecurity principles addresses concerns expressed by the commenters regarding the need to have a biosecurity plan in place before a facility is affected by HPAI. Facilities will be audited at least once every 2 years or a sufficient number of times during that period to satisfy their Official State Agency (OSA),[3] a term we define in 9 CFR 145.1 and 146.1 as the State authority we recognize as a cooperator in the administration of NPIP requirements, that the facility's biosecurity plan complies with our 14 biosecurity principles, *i.e.,* with the NPIP Standards. The audit will include, but may not be limited to, an evaluation of the biosecurity plan itself and documentation showing that the plan is being implemented.

To be recognized as compliant with our biosecurity principles and eligible for indemnity, owners and/or contractors whose biosecurity plans fail the audit described above must have a check audit performed by a team appointed by the National NPIP Office and must demonstrate they have implemented applicable biosecurity measures.

The auditing procedures are described in a new paragraph (e) that we are adding to § 53.11 in this final rule and in greater detail in the NPIP Program Standards.

A number of commenters opposed exempting smaller facilities from the biosecurity certification requirement. It was stated that weak biosecurity at a facility of any size may result in the spread of HPAI and that some facilities that the interim rule exempted from the biosecurity requirement were, in fact, affected during the 2014–2015 HPAI outbreak. One commenter stated that the flock size thresholds for exempted facilities needed to be lowered considerably. According to the commenter, the bird density on some of the exempted facilities was still high enough to pose a risk of spreading HPAI.

While it is true that weak biosecurity on a farm of any size could lead to spread of disease, the farms that were affected during the 2014–2015 outbreak were overwhelming large commercial facilities. There are approximately 18,900 operations that will be subject to the biosecurity statement requirement, out of 233,770 poultry producers in the United States. Those 18,900 operations, however, produce or house approximately 99 percent of the poultry in the United States. Exempting the smaller facilities, therefore, allows us to focus our resources on the operations that raise or house 99 percent of the nation's poultry supply. While bird density on some smaller operations may be high enough to pose a risk of spreading HPAI due to environmental contamination when biosecurity is lacking, as noted above, 99 percent of the nation's poultry reside and are raised on non-exempt operations. Lowering the flock-size threshold would increase the regulatory burden on small producers, which were not a major contributing factor in disease spread during the 2014–2015 HPAI outbreak. In addition, if the small farms participate in the NPIP because they are selling poultry, they would have to have a biosecurity plan to comply with the NPIP Program Standards.

In the preamble to February 2016 interim rule, we had stated that an additional reason for our focus on large facilities is that their operators had suffered the most devastating impacts during the 2014–2015 outbreak. A commenter disputed that rationale, stating that because smaller contractors may have lost their entire flocks to depopulation, they may have been affected more adversely than the owners with whom they contracted, since the latter may have other, unaffected contractors with whom to place their products.

While the loss of any size flock adversely affects the contractor, all flocks that were infected by HPAI during the 2014–2015 outbreak were completely depopulated, including those owned by large-scale producers. During the 2014–2015 HPAI outbreak, there were 21 infected backyard flocks totaling approximately 10,000 birds versus 211 commercial flocks totaling approximately 50 million birds. In the aggregate, then, the impact on large commercial producers was much greater.

Furthermore, in some cases, depopulation may also have greater impacts on individual commercial farms than on smaller facilities. Smaller flock owners and contractors are more likely to be diversified. A small contract grower with 500 birds is unlikely to be able to make a living on selling the eggs or the meat from those birds. For that reason, he or she may have other occupations or businesses or may raise other livestock. Commercial producers, on the other hand, focus on raising poultry, so depopulation of their flocks may leave them without immediate alternatives.

A commenter questioned whether removing the exemption for smaller facilities would really place an undue regulatory burden on the owners and contractors operating such facilities. The commenter suggested that due to the lower bird density on smaller facilities, owners and contractors on small facilities may have to make fewer adaptations to their existing biosecurity procedures than would those on larger ones. That being the case, the commenter suggests, our biosecurity requirements may not place a greater regulatory burden on smaller facilities than on larger ones.

In our view, the biosecurity requirements included in this final rule and the NPIP Program Standards would likely prove more burdensome for smaller facilities than for larger ones. Many smaller owners and contractors

[2] To view the notices and the Program Standards, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0103.*

[3] We note that the State of Hawaii does not participate in the NPIP or have an OSA as defined in §§ 145.1 and 146.1. Audits on facilities in Hawaii may be performed by APHIS or an APHIS representative.

raise free-range chickens. To mitigate the chance of exposure of their flocks to HPAI and comply with our biosecurity principles, small growers and contractors would likely have to construct enclosures to prevent exposure to wild birds and waterfowl. With fewer birds on their premises, smaller owners and contractors might have to spend more per bird to construct such enclosures than would larger ones.

Miscellaneous

One commenter questioned our justification for publishing an interim rule. The commenter stated that we did not provide evidence that the Administrative Procedure Act's ''good cause'' exemption from the regular notice and comment rulemaking process should have applied to the interim rule. In the commenter's view, we did not clearly state what public interest was served by our issuing an interim rule on an emergency basis rather than a proposed rule followed by a final rule.

In our view, emergency action was necessary due to the possibility of another HPAI outbreak occurring during the spring wild bird migration season. In order to prevent the spread of the disease, we needed to ensure timely and equable compensation to both owners and contractors for flocks destroyed due to HPAI.

Finally, we are adding a new paragraph (f) to § 53.11, describing the notice-based procedure we will use to update the biosecurity principles and other sections of the NPIP Program Standards. Proposed updates will be announced to the public through a **Federal Register** notice in accordance with the NPIP regulations in 9 CFR 147.53(e).

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988.

Executive Orders 12866, 13563, 13771 and Regulatory Flexibility Act

This action 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 Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis is summarized below. Copies of the full analysis are available on the *Regulations.gov* website or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

This final rule is considered an Executive Order 13771 regulatory action. In accordance with guidance on complying with Executive Order 13771, the single primary estimate of the cost of this rule is $9.3 million, the mid-point estimate annualized in perpetuity using a 7 percent discount rate. Details on the estimated costs of this final rule can be found in the rule's economic analysis.

Regulatory Flexibility Act

APHIS is adopting as a final rule, with changes, an interim rule that amended the regulations pertaining to certain diseases of livestock and poultry to specify conditions for payment of indemnity claims for HPAI. The interim rule provided a formula allowing us to split such payments between poultry and egg owners and parties with which the owners enter into contracts to raise or care for the eggs or poultry based on the proportion of the production cycle completed. The interim rule also clarified an existing policy regarding the payment of indemnity for eggs destroyed due to HPAI. The interim rule also required a statement from owners (including independent growers) and contractors (contract growers), unless exempt, indicating that at the time of detection of HPAI in their facilities, they had in place and were following a biosecurity plan aimed at keeping HPAI from spreading to commercial premises. Under this final rule, we are removing the self-certification and adding provisions for verifying that the owner and/or contractor does have a biosecurity plan in place and that the plan is, in fact, being implemented.

At the time of the most recent outbreak, the regulations in part 53 did not specify that the indemnity be split between owners and contractors. When APHIS pays to compensate owners and contractors for losses, that compensation should be distributed to parties who suffer losses based on the terms of the contract. The vast majority of contracts are expected to reflect the relative level of inputs or investments of the parties who suffer losses.

Inadequate biosecurity measures may have led to HPAI introduction or spread within and among some commercial facilities. Therefore, this final rule also requires large owners and contractors to have in place, at the time of detection of HPAI, and have been following a poultry biosecurity plan that is compliant with the biosecurity standards outlined in the NPIP Program Standards, in order to receive compensation for claims arising out of the destruction of animals or eggs destroyed due to an outbreak of HPAI. Note that the NPIP is a cooperative Federal-State-Industry mechanism for controlling certain poultry diseases.

The entities affected by this rule are U.S. facilities primarily engaged in breeding, hatching, and raising poultry for meat or egg production, and facilities primarily engaged in slaughtering poultry. There were about 18,900 farms that would be subject to the provisions of this rule in the 2012 Agricultural Census. Almost all commercial operations raising broilers are contract growers.[4] [5]

The United States is the world's largest poultry producer and the second-largest egg producer. The combined value of production from broilers, eggs, and turkeys, and the value of sales from chickens in 2016 was $38.7 billion. In 2016, the United States exported poultry meat valued at about $3.3 billion. Following the first HPAI findings in December 2014, a number of trading partners imposed complete or partial bans on shipments of U.S. poultry and poultry products. All but one of these restrictions from the 2014–15 outbreak have since been lifted. United States poultry and poultry product exports declined by about 31 percent from 2014 through 2016. Exports in 2017 were at approximately the same level as 2016.

Broilers account for nearly all U.S. chicken consumption. Broiler production and processing primarily occurs within highly integrated production systems. Owners of the processing facilities also own the birds that are processed and contract with growers (contract growers) to raise those birds before processing. Expanded broiler production has been made possible to a large extent by the vertically integrated production system and through the use of production contracts.

Under the system of production contracts, the contractor normally

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

[5] 2011 USDA Agricultural Resource Management Survey, Version 4.

supplies the grow-out house with all the necessary heating, cooling, feeding, and watering systems. The contractor also supplies the labor needed in growing the birds. The owner normally supplies the chicks, feed, veterinary medicines, and transportation. Contractors have exclusive contracts with an owner and receive payment for the services that they provide, with premiums and discounts tied to the efficiency with which feed is converted to live-weight broilers, the minimization of mortality, or the number of eggs produced. Specific contract terms and the period covered can vary.

Embedded in the value of a bird at any point in time is the value of inputs by both owners and contractors. Contractors' costs are more or less fixed and are heavily committed early in the production cycle. Prior to the publication of the interim rule, indemnity payments went directly to the owner of the birds who, depending on the terms of the contractual arrangement, might or might not have compensated the contractor. It is important to finalize these regulations to share indemnity payments between poultry owners and contractors, both of whom have productive assets imbedded in the value of the bird.

APHIS' determination of the total amount of indemnity will remain the same under the rule as before. However, to determine the appropriate payment split between owner and contractor, APHIS may have to examine contract specifics on a case-by-case basis. This rule does not change the total amount of compensation paid in a given situation, but will ensure equitable distribution of that compensation between the owner and contractor. This rule benefits contractors who otherwise may suffer uncompensated economic losses from participating in an eradication program.

This rule also specifies the appropriate reference to eggs and a description of the appraisal of the value of eggs destroyed due to HPAI, simply clarifying existing practice for the indemnification of destroyed eggs and will not change the total amount of any compensation paid in a given future situation.

This final rule requires large owners and contractors to follow 14 industry-standard biosecurity principles. These principles are laid out in the NPIP Program Standards. The vast majority of contractors have some level of biosecurity in place on their operations, or were in the process of voluntarily adopting biosecurity measures prior to the implementation of the interim rule.

There are approximately 18,900 poultry operations that will be subject to this requirement. There will be one-time costs and annual costs for some poultry operations associated with this rule. One-time costs include the development of a biosecurity plan, and equipment purchases for those facilities that need to implement structural biosecurity measures in order to be fully compliant with the NPIP biosecurity principles. In addition, some producers will incur additional recurring biosecurity training costs necessary to be compliant with these regulations.

The biosecurity measures needed on a given operation are specific to that operation. The vast majority of operations already have some level of biosecurity in place on their operations, as a result of contractual obligations, participation in existing government/industry programs, compliance with existing regulations, or existing company policies, thereby reducing the need for many poultry operations to implement such measures from scratch. Most will be able to adhere to the NPIP biosecurity principles by making small operational changes and identifying and enumerating current standard operating procedures in their biosecurity plans. Some poultry operations will have to implement new operational or structural biosecurity measures in order to be fully compliant with the NPIP biosecurity principles. Based on discussions with industry, the measures that are most likely to involve changes for poultry operations concern the biosecurity categories of training, cleaning and disinfection of equipment, and the treatment of water. For the few poultry operations that need additional vehicle cleaning and disinfection, we estimate that the total one-time costs for equipment will be from about $48,000 to $439,000.

The vast majority of affected poultry operations have access to municipal water or a sufficiently deep well to meet the standards laid out in the biosecurity principles. For poultry operations that need to treat water we estimate that total one-time costs for equipment will range from about $570,000 to $1.1 million. Many operations affected by this rule will need to review their existing biosecurity plans and some will need to develop new plans. We estimate that if 5 percent of affected poultry operations need to develop new biosecurity plans and 95 percent need to review existing biosecurity plans, the total one-time cost could be between $1.8 million and $2 million.

We estimate that the total additional annual biosecurity training will cost from about $5.3 million to $9.3 million. In addition, annual costs of sanitizers used in vehicle cleaning and disinfection could range from about $2,550 to $10,200 in total for those few operations needing additional cleaning and disinfection. Annual costs of chemicals for water treatment could range from about $164,000 to $328,500 in total for those few operations needing water treatment. We estimate that the total cost of performing audits of the biosecurity plans at all affected facilities will be between $2.8 million and $3.3 million. Because these audits will be performed every 2 years, we assume that one half of this cost is incurred each year.

This rule directly benefits poultry operations who otherwise may suffer uncompensated economic losses from participating in an HPAI eradication program. In addition, the development or revision of biosecurity requirements may help to avert future HPAI outbreaks or prevent the spread of disease during an outbreak. To the extent that the rule contributes to the elimination of HPAI, entities at all levels of the poultry industry as well as consumers will benefit over the long term.

The 2015 HPAI outbreak had a substantial impact on the U.S. poultry sector. The birds lost during the outbreak accounted for about 12 percent of the U.S. table-egg laying population and 8 percent of the estimated inventory of turkeys grown for meat. Losses in the egg sector, including layers and eggs, were estimated at nearly $1.04 billion. Layers accounted for a large majority of the birds lost due to the outbreak with those losses compounded by extensive losses of layer pullets, young birds that mature into replacement layers. Turkey losses were magnified by the relatively large size of the birds and smaller inventory. Almost 600,000 breeding turkeys were lost. Market and breeding turkey losses due to the 2015 outbreak were estimated at $530 million.

Many destination markets for U.S. poultry commodities levied trade restrictions on U.S. poultry exports, distorting markets and exacerbating economic losses for all poultry sectors. Although very few broilers were affected by the outbreak, trade restrictions decreased overseas demand for broiler products and contributed to much lower 2015 and 2016 broiler prices compared to pre-outbreak levels.

APHIS paid indemnities for euthanized poultry and destroyed eggs as well as paying for the euthanasia, cleaning and disinfection of poultry premises and equipment, and testing for the HPAI virus to ensure poultry farms can be safely repopulated. In total, the U.S. Department of Agriculture spent about $850 million on these activities related to the 2015 outbreak.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

APHIS has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under Executive Order 13175. If a Tribe requests consultation, APHIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the burden requirements included in this final rule will be approved by the Office of Management and Budget under control number 0579–0440.

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 rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

List of Subjects in 9 CFR Part 53

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

Accordingly, the interim rule amending 9 CFR part 53 that was published at 81 FR 6745–6751, on February 9, 2016, is adopted as a final rule with the following changes:

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 by adding a definition of *Poultry biosecurity plan* in alphabetical order to read as follows:

§ 53.1 Definitions.

* * * * *

Poultry biosecurity plan. A document utilized by an owner and/or contractor describing the management practices and principles that are used to prevent the introduction and spread of infectious diseases of poultry at a specific facility.

* * * * *

■ 3. Section 53.10 is amended as follows:

■ a. By removing paragraph (g) introductory text;

■ b. By revising paragraph (g)(1); and

■ c. By adding an OMB citation at the end of the section.

The revision and addition read as follows:

§ 53.10 Claims not allowed.

* * * * *

(g)(1) Except as provided in paragraph (g)(2) of this section, the Department will not allow claims arising out of the destruction of animals or eggs destroyed due to an outbreak of highly pathogenic avian influenza unless the owner of the animals or eggs and, if applicable, any party that enters into a contract with the owner to grow or care for the poultry or eggs, had in place, at the time of detection of highly pathogenic avian influenza, and was following a poultry biosecurity plan that meets the requirements of § 53.11(e).

* * * * *

(Approved by the Office of Management and Budget under control number 0579–0440)

■ 4. Section 53.11 is amended as follows:

■ a. By adding paragraphs (e) and (f); and

■ b. By adding an OMB citation at the end of the section.

The additions read as follows:

§ 53.11 Highly pathogenic avian influenza; conditions for payment.

* * * * *

(e)(1) The owner and, if applicable, the contractor, unless exempted under § 53.10(g)(2), must have a poultry biosecurity plan that is approved by the Administrator. Approved biosecurity principles are listed in the NPIP Program Standards, as defined in § 147.51 of this chapter. Alternative biosecurity principles may also be approved by the Administrator in accordance with § 147.53(d)(2) of this chapter.

(2)(i) The biosecurity plan shall be audited at least once every 2 years or a sufficient number of times during that period to satisfy the owner and/or contractor's Official State Agency that the plan is in compliance with the biosecurity principles contained in the NPIP Program Standards. The audit will include, but may not be limited to, a review of the biosecurity plan, as well as documentation that it is being implemented.

(ii) To be recognized as being in compliance with the biosecurity principles and eligible for indemnity, owners and contractors who fail the initial audit conducted by the NPIP Official State Agency must have a check audit performed by a team appointed by National NPIP Office and must demonstrate that they have implemented applicable biosecurity measures. The team will consist of an APHIS poultry subject matter expert, the Official State Agency, and a licensed, accredited, industry poultry veterinarian.

(f) Proposed updates to the NPIP Program Standards will be announced to the public through a **Federal Register** notice, as described in § 147.53(e) of this chapter.

(Approved by the Office of Management and Budget under control number 0579–0440)

Done in Washington, DC, this 8th day of August 2018.

Greg Ibach,

Under Secretary for Marketing and Regulatory Programs.

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Federal Aviation Administration

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Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.