State	Wage area	Beginning month of survey	Calendar year of full-scale survey odd or even
New York	Jefferson	May	Odd.
	Kings-Queens	October	Even.
	Niagara	May	Odd.
	Orange	May	Odd.
North Carolina	Craven	March	Even.
	Cumberland	March	Even.
	Onslow	February	Even.
	Wayne	March	Even.
North Dakota	Grand Forks	July	Odd.
	Ward	July	Odd.
Ohio	Greene-Montgomery	April	Odd.
Oklahoma	Comanche	March	Even.
	Oklahoma	March	Even.
Pennsylvania	Allegheny	May	Odd.
	Cumberland	May	Even.
	Montgomery	August	Odd.
	York	May	Even.
Puerto Rico	Guaynabo-San Juan	February	Even.
Rhode Island	Newport	July	Even.
South Carolina	Charleston	February	Even.
	Richland	March	Even.
South Dakota	Pennington	June	Even.
Tennessee	Shelby	February	Even.
Texas	Bell	June	Odd.
	Bexar	June	Even.
	Dallas	June	Even.
	El Paso	February	Odd.
	McLennan	May	Odd.
	Nueces	June	Even.
	Tarrant	June	Even.
	Taylor	June	Odd.
	Tom Green	June	Odd.
	Wichita	March	Even.
Utah	Davis-Salt Lake-Weber	July	Odd.
Virginia	Alexandria-Arlington-Fairfax	August	Even.
	Chesterfield-Richmond	August	Odd.
	Hampton-Newport News	May	Even.
	Norfolk-Portsmouth-Virginia Beach	May	Even.
	Prince William	August	Even.
Washington	Kitsap	June	Even.
	Pierce	July	Even.
	Snohomish	July	Even.
	Spokane	July	Odd.
Wyoming	Laramie	July	Even.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145, 146, and 147

[Docket No. APHIS–2007–0042]

RIN 0579–AC78

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. The proposed changes were voted on and approved by the voting delegates at the Plan's 2006 National Plan Conference. These changes would keep the provisions of the Plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

DATES: We will consider all comments that we receive on or before July 28, 2008.

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–2007–0042* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0042, 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–2007–0042.

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: Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 101, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (NPIP, also referred to below as ''the Plan'') is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control poultry diseases. Participation in all Plan programs is voluntary, but breeding flocks, hatcheries, and dealers must first qualify as ''U.S. Pullorum-Typhoid Clean'' as a condition for participating in the other Plan programs.

The Plan identifies States, flocks, hatcheries, dealers, and slaughter plants that meet certain disease control standards specified in the Plan's various programs. As a result, customers can buy poultry that has tested clean of certain diseases or that has been produced under disease-prevention conditions.

The regulations in 9 CFR parts 145, 146, and 147 (referred to below as the regulations) contain the provisions of the Plan. The Animal and Plant Health Inspection Service (APHIS, also referred to as ''the Service'') of the U.S. Department of Agriculture (USDA, also referred to as ''the Department'') amends these provisions from time to time to incorporate new scientific information and technologies within the Plan.

The proposed amendments discussed in this document are consistent with the recommendations approved by the voting delegates to the National Plan Conference that was held from September 7 to September 9, 2006. Participants in the 2006 National Plan Conference represented flockowners, breeders, hatcherymen, slaughter plants, and Official State Agencies from all cooperating States. The proposed amendments are discussed in detail below.

Definitions

We are proposing to amend the definition of *equivalent or equivalent requirements* in § 145.1 and the definition of *equivalent* in § 146.1. The definition for both these terms currently reads: ''Requirements which are equal to the program, conditions, criteria, or classifications with which compared, as determined by the Official State Agency and with the concurrence of the Service.'' We would add the words ''or exceed'' after the words ''equal to,'' in order to indicate that the requirements may also be more stringent or restrictive than the requirements with which they are being compared and still be considered equivalent. We would also add the words ''they are'' after the words ''with which'' for clarity.

We are also proposing to add to the regulations definitions of a body within the NPIP, the NPIP Technical Committee, and a position within the NPIP, the Senior Coordinator.

The NPIP Technical Committee would be defined in § 145.1 as: ''A committee made up of technical experts on poultry health, biosecurity, surveillance, and diagnostics. The committee consists of representatives from the poultry and egg industries, universities, and State and Federal governments and is appointed by the Senior Coordinator and approved by the General Conference Committee.'' The NPIP Technical Committee is currently referred to in the regulations in § 145.15; adding this definition will clarify what we mean by that term.

The regulations in § 147.43(d)(1) refer to the Senior Coordinator and his staff administering the provisions of the plan. The definition of *Senior Coordinator* that we are proposing to add to § 145.1 would indicate what roles the Senior Coordinator plays in administering the plan. The Senior Coordinator's duties might include, but would not necessarily be limited to:

- Serving as executive secretary of the General Conference Committee;
- Serving as chairperson of the Plan Conference described in § 147.47;
- Planning, organizing, and conducting the Plan Conference;
- Reviewing NPIP authorized laboratories as described in proposed § 147.51 (see the section headed ''Authorized Laboratories'' later in this document);
- Coordinating the State administration of the NPIP through periodic reviews of the administrative procedures of the Official State Agencies, according to the applicable provisions of the Plan and the Memorandum of Understanding required in §§ 145.2(a) and 146.2(a);
- Coordinating rulemaking to incorporate the proposed changes of the provisions approved at the Plan conference into the regulations in 9 CFR parts 145, 146, and 147;
- Directing the production of official NPIP publications;
- Proposing an annual budget for plan activities and the General Conference Committee; and
- Providing overall administration of the NPIP.

Contact Representatives

The regulations in §§ 145.2(a) and 146.2(a) state that the Department cooperates through a Memorandum of Understanding with the Official State Agency in the administration of the Plan. One key component of the Memorandum of Understanding is the Official State Agency's designation of a contact representative to serve as a liaison between the Service and the Official State Agency. The contact representative facilitates communication between the two organizations.

While we have requested that Official State Agencies designate contact representatives in their Memoranda of Understanding, we currently do not require them to do so in the regulations. However, because this position is crucial to the effective operation of the NPIP, we are proposing to make the designation of a contact representative by the Official State Agency a requirement. To accomplish this, we would add a sentence to the end of §§ 145.2(a) and 146.2(a) that would read as follows: ''In the Memorandum of Understanding, the Official State Agency must designate a contact representative to serve as a liaison between the Service and the Official State Agency.''

Official Tests for Avian Influenza

The regulations in §§ 145.14(d) and 146.13(b) set out the NPIP approved tests for avian influenza in breeding poultry and commercial poultry, respectively. These paragraphs provide for the use of the agar gel immunodiffusion (AGID) test, under the procedures set forth in § 147.9, and the enzyme-linked immunosorbent assay (ELISA). The AGID test must be conducted on all ELISA-positive samples. Positive tests by AGID or ELISA must be further tested by Federal Reference Laboratories. Final judgment may be based upon further sampling or culture results. In addition, the tests must be conducted using antigens or test kits approved by the Service. Test kits for ELISA must be licensed by the Service and approved by the Official State Agency, and tests must be performed in accordance with the recommendations of the producer or manufacturer.

Paragraph (b) of § 146.13 further requires that the official determination of a flock as positive for the H5 or H7 subtypes of low pathogenic avian influenza may be made only by the Service's National Veterinary Services Laboratories (NVSL). This paragraph also states that the AGID and ELISA tests may be performed either on egg yolk or blood samples. Otherwise, §§ 145.14(d) and 146.13(b) are substantively identical.

We are proposing to amend §§ 145.14(d) and 146.13(b) to include two agent detection tests in addition to the AGID and ELISA antibody detection tests. To accommodate the addition of the agent detection tests, we would reorganize §§ 145.14(d) and 146.13(b) by splitting each of those paragraphs into two subparagraphs. The requirements related to the antibody detection tests would then appear under the heading ''Antibody detection tests'' in §§ 145.13(d)(1) and 146.13(b)(1), respectively. We would indicate in both paragraphs that the AGID test must be conducted using reagents approved by the Department and the Official State Agency, and that it can be performed on egg yolk or blood samples. (The ELISA could still be performed on egg yolk or blood samples as long as it is performed in accordance with the recommendations of the producer or manufacturer.)

We are also proposing to add the new provisions for agent detection tests in §§ 145.14(d)(2) and 146.13(b)(2), respectively. Authorized laboratories would be allowed to perform tests that detect influenza A matrix gene or protein, but not tests that determine hemagglutinin or neuraminidase subtypes; all tests that determine those subtypes should be performed by National Animal Health Laboratory Network members, to ensure the reliability of their results. Samples for agent detection testing would be collected from naturally occurring flock mortality or clinically ill birds, to increase the sensitivity of the testing.

We would provide for the use of two agent detection tests: The real time reverse transcriptase/polymerase chain reaction (RRT–PCR) assay and the USDA-licensed type A influenza antigen capture immunoassay (ACIA). The RRT–PCR and the ACIA are rapid flock screening tools that can provide highly specific, scalable results on the same day (the RRT–PCR within 3 to 5 hours and the ACIA within 15 minutes). These tests would have significant value both as screening tests and as part of initial State response and containment plans to control avian influenza (as described in 9 CFR 56.10).

The RRT–PCR tests would have to be conducted using reagents approved by the Department and the Official State Agency. The RRT–PCR would have to be conducted using the NVSL official protocol for RRT–PCR (AVPR01510) and be conducted by personnel who have passed an NVSL proficiency test. Positive results from the RRT–PCR would have to be further tested by Federal Reference Laboratories using appropriate tests for confirmation. Final judgment could be based upon further sampling and appropriate tests for confirmation.

The USDA-licensed type A influenza ACIA would have to be conducted using test kits approved by the Department and the Official State Agency and would have to be conducted in accordance with the recommendations of the producer or manufacturer. Positives on the ACIA would have to be further tested by Federal Reference Laboratories using appropriate tests for confirmation. Final judgment could be based upon further sampling and appropriate tests for confirmation.

Finally, we would amend § 145.14(d) to indicate there as well that the official determination of a flock as positive for the H5 or H7 subtypes avian influenza may be made only by NVSL.

In a related change, we are proposing to move the requirements in § 145.15, ''Approved tests,'' to a new § 147.52. We would also add a new § 147.51 to describe the requirements for authorized laboratories; these proposed changes are discussed later in this document under the heading ''Authorized Laboratories.'' The new §§ 147.51 and 147.52 would be placed in a new subpart in 9 CFR part 147 to collect the provisions governing approval of laboratories and tests.

Diagnostic Surveillance Plan for H5/H7 Low Pathogenic Avian Influenza

In an interim rule published and effective September 26, 2006 (71 FR 53601–56333, Docket No. APHIS–2005–0109), we amended the regulations to establish a voluntary control program for the H5/H7 subtypes of low pathogenic avian influenza (H5/H7 LPAI) in commercial poultry—specifically, in table-egg layers, meat-type chickens, and meat-type turkeys. This voluntary control program includes a requirement for participating States to develop a diagnostic surveillance program that includes all poultry in the State, not just commercial poultry. The regulations governing the development of such a program are found in § 146.14. Participation in the voluntary control program is a condition for States and large producers to be eligible to receive 100 percent indemnity for costs related to an outbreak of H5/H7 LPAI under 9 CFR part 56.

We are proposing to add a new § 145.15 that duplicates the regulations in § 146.14 to ensure that participants in the NPIP for breeding poultry are aware that States participating in the voluntary control program must develop a diagnostic surveillance program that includes both breeding and commercial poultry.

Testing Requirements for U.S. Avian Influenza Clean Programs for Multiplier Egg-Type Chicken, Meat-Type Chicken, and Turkey Breeding Flocks

The regulations set out requirements for the U.S. Avian Influenza Clean classifications for multiplier egg-type chicken breeding flocks, multiplier meat-type chicken breeding flocks, and multiplier turkey breeding flocks at §§ 145.23(h)(2), 145.33(l)(2), and 145.43(g)(2), respectively. These paragraphs all require that, for a multiplier breeding flock to retain the U.S. Avian Influenza Clean classification, a sample of at least 30 birds must be tested negative at intervals of 180 days, or a sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 180-day period.

However, due to the virulence of the avian influenza virus and the minute amount of infective fecal material and respiratory secretions required to transmit the virus and infect a flock, industry participants have determined that the 180-day interval between tests is too long to provide satisfactory assurance that the flocks being tested are U.S. Avian Influenza Clean for these types of poultry.

The U.S. Avian Influenza Clean programs for primary breeding flocks of egg-type chickens, meat-type chickens, and turkeys (in §§ 145.73(f)(1), 145.83(g)(1), and 145.43(g)(1), respectively) require testing every 90 days. We believe this interval is appropriate for all flocks of these types of poultry. Therefore, we are proposing to replace references to the 180-day testing interval in §§ 145.23(h)(2), 145.33(l)(2), and 145.43(g)(2) with references to a 90-day testing interval. We believe this change would help to ensure that flocks with the U.S. Avian Influenza Clean classification are free of avian influenza.

The regulations currently require that 30 birds be tested negative at intervals of 180 days. For multiplier breeding flocks of egg-type chickens and turkeys, we would retain the requirement that 30 birds be tested while reducing the

interval at which they are tested to 90 days. For multiplier breeding flocks of meat-type chickens, we would require that 15 birds be tested negative every 90 days. Egg-type chicken and turkey breeding flocks receive much more regular supervision than meat-type chicken breeding flocks, and those industries determined that testing the same number of birds over a shorter interval would be practical. The changes to the testing requirement for meat-type chicken breeding flocks would result in the same number of these birds being tested as are tested under the current regulations, but would still increase the assurance that the flocks tested are U.S. Avian Influenza Clean by providing more frequent results.

The waterfowl, exhibition poultry, and game bird breeding industry considered this change and determined that it is not appropriate at this time; multiplier waterfowl, exhibition poultry, and game bird breeding flocks participating in the U.S. Avian Influenza Clean program would continue to be tested at intervals of 180 days.

Option for Reporting Poultry Sales for Waterfowl, Exhibition Poultry, and Game Bird Breeding Flocks and Products

The regulations for the participation of waterfowl, exhibition poultry, and game bird breeding flocks in § 145.52 state that, subject to the approval of the Service and the Official State Agencies in the relevant States, participating flocks may report poultry sales by using printouts of computerized monthly shipping and receiving reports in lieu of Veterinary Services (VS) Form 9–3, ''Report of Sales of Hatching Eggs, Chicks, and Poults.'' The regulations do not state what information would need to be included in such monthly shipping and receiving reports if they are used in lieu of VS Form 9–3. We are proposing to add requirements for these monthly shipping and receiving reports to the regulations.

The regulations would state specifically that a hatchery invoice form (9–3I) approved by the Official State Agency and the Service may be used in lieu of VS Form 9–3 to identify poultry sales to clients. If the selling hatchery uses the 9–3I form, we would require that the following information be included on the form:

- The form number ''9–3I,'' printed or stamped on the invoice;
- The hatchery name and address;
- The date of shipment;
- The hatchery invoice number;
- The purchaser name and address;
- The quantity of products sold;
- Identification of the products by bird variety or by NPIP stock code as listed in the NPIP APHIS 91–55–078 appendix; and
- The appropriate NPIP illustrative design in § 145.10. One of the designs in § 145.10(b) or (g) would have to be used. The following information would have to be provided in or near the NPIP design:
  - The NPIP State number and NPIP hatchery approval number; and
  - The NPIP classification for which product is qualified (e.g., U.S. Pullorum-Typhoid Clean).

This change would ensure that reports provided in lieu of VS Form 9–3 would have standard information and make it easy to use such reports in place of that form.

New U.S. Avian Influenza Clean Classification for Ostrich, Emu, Rhea, and Cassowary Breeding Flocks and Products

Subpart F of 9 CFR part 145 contains the special Plan provisions for ostrich, emu, rhea, and cassowary breeding flocks and products. Section 145.63 contains the requirements for ostrich, emu, rhea, and cassowary breeding flocks to earn the U.S. Pullorum-Typhoid Clean classification. We are proposing to add a U.S. Avian Influenza Clean classification to § 145.63, in a new paragraph (b). This classification would be the basis from which the breeding-hatchery industry may conduct a program for the prevention and control of avian influenza. It would be intended to determine the presence of avian influenza in all ostrich, emu, rhea, and cassowary breeding flocks through routine serological surveillance of each participating breeding flock.

Acceptable tests would include antigen and antibody detection tests, as approved by the Official State Agency.

An ostrich, emu, rhea, or cassowary breeding flock, and the hatching eggs and chicks produced from it, would qualify for this classification when the Official State Agency determines that it has met one of the following requirements:

- It is a primary breeding flock in which 10 percent of the flock, up to a maximum of 30 birds, has been tested negative for type A influenza virus with all pens represented equally and when the tested birds are more than 4 months of age. Positive samples would be further tested by an authorized laboratory. To retain this classification, a sample of at least 30 birds would have to be tested negative at intervals of 180 days, or a sample of less than 10 percent of the birds up to a maximum of 30 birds could be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds are tested within each 180-day period.
- It is a multiplier breeding flock in which a minimum of 30 birds has been tested negative to type A influenza virus with all pens represented equally and when the tested birds are more than 4 months of age. Positive samples would be further tested by an authorized laboratory. To retain this classification, a sample of at least 30 birds would have to be tested negative at intervals of 180 days, or a sample of at least 10 percent of birds from each pen with all pens being represented would have to be tested negative at intervals of 180 days; or a sample of less than 10 percent of the birds could be tested, and found to be negative, at any one time if all pens are equally represented and a total of 10 percent of the birds are tested within each 180-day period.

These requirements are similar to the requirements in the U.S. Avian Influenza Clean classification for waterfowl, exhibition poultry, and game bird breeding flocks and products.

Audit Process for Commercial Poultry Slaughter Plants

In part 146, which contains the NPIP provisions for commercial poultry, § 146.11 sets out the process for inspecting participating slaughter plants. Paragraph (a) of § 146.11 requires each participating slaughter plant to be audited at least once annually or a sufficient number of times each year to satisfy the Official State Agency that the participating slaughter plant is in compliance with the provisions of 9 CFR part 146. Paragraph (b) provides that on-site inspections of any participating flocks and premises will be conducted if a State Inspector determines that a breach of testing has occurred for the Plan programs for which the flocks are certified. Paragraph (c) provides that the official H5/H7 LPAI testing records of all participating flocks and slaughter plants shall be examined annually by a State Inspector and that official H5/H7 LPAI testing records shall be maintained for 3 years.

The regulations currently do not provide any detail regarding the audit process described in paragraph (a). We are proposing to describe this process in detail in the regulations, to inform regulated parties, trading partners, and the general public regarding the information we examine and the consequences if an audit finds that a slaughter plant is not complying with the regulations.

The yearly audit would consist of an evaluation of 2 weeks' worth of records,

selected at random, of the following data:

• The actual flock slaughter date for each flock. This information would be required to come from a verifiable source. Verifiable sources would include electronic record systems that have oversight from the Department's Grain Inspection, Packers and Stockyards Administration or Food Safety and Inspection Service (FSIS) documents such as FSIS Form 9061–2.

• Laboratory test results for each flock slaughtered with the sample collection date and test result. The test would have to be NPIP-approved and performed in an authorized laboratory of the NPIP.

We would redesignate current paragraphs (b) and (c) as paragraphs (d) and (e), respectively, and add new paragraphs (b) and (c) to further describe the audit process. Under proposed paragraph (b), a flock would be considered to be not conforming to protocol if there are no test results available, if the flock was not tested within 21 days before slaughter, or if the test results for the flock were not returned before slaughter.

Under proposed paragraph (c), two or more flocks that are found to be not conforming to protocol in the yearly audit for a slaughter plant would be cause for a deficiency rating for that plant. However, if the root cause for the deficiency was identified, corrected, and documented, the plant would be eligible for an immediate reevaluation of 2 additional weeks' worth of records, again selected at random. If no more than one missed flock was identified in this reevaluation, the plant would be considered in compliance and no further action would be required. Plants found to be deficient would have to provide a written corrective action plan to the auditor within 2 weeks of receipt of the deficiency rating. A followup audit on the information in proposed paragraphs (a)(1) and (a)(2) would occur within 90 days from the receipt of the corrective action plan. Slaughter plants would retain their Plan classification and could continue to use the Plan emblem during this process. However, a failure on the followup audit could result in disbarment from participation in the NPIP according to the procedures in § 146.12.

Sampling at Commercial Meat-Type Turkey Slaughter Plants

The regulations in § 146.43(a) set out the requirements meat-type turkey slaughter plants must fulfill in order to qualify for the U.S. H5/H7 Avian Influenza Monitored classification. Paragraphs (a)(1) and (a)(2) offer two options for qualifying for the classification: The plant must either test a sample of a minimum of 60 birds each month for antibodies to type A avian influenza virus or have an ongoing active and diagnostic surveillance program for the H5/H7 subtypes of avian influenza in which the number of birds tested is equivalent to 60 each month and that is approved by the Official State Agency and the Service.

We are proposing to amend paragraph (a)(1) to indicate that a participating meat-type turkey slaughter plant may accept only meat-type turkeys from flocks where a minimum of 6 birds per flock has tested negative for antibodies to type A avian influenza virus with an approved test no more than 21 days prior to slaughter. This level of testing is sufficient to establish the meat-type turkey slaughter plant as U.S. H5/H7 Avian Influenza Monitored under the Plan.

The proposed provisions would also explicitly allow for testing at the flock level (prior to slaughter), an option that has been requested by the meat-type turkey industry. Testing at slaughter would still be authorized under paragraph § 146.43(a)(2), which allows slaughter plants to use any ongoing active and diagnostic surveillance program for the H5/H7 subtypes of avian influenza in which the number of birds tested is equivalent to the number required in paragraph (a)(1) and that is approved by the Official State Agency and the Service. Testing at slaughter could fulfill this requirement, subject to approval by the Official State Agency and the Service.

New U.S. H5/H7 Avian Influenza Classification for Raised-for-Release Upland Game Birds, Raised-for-Release Waterfowl, Commercial Upland Game Birds and Commercial Waterfowl

The regulations in 9 CFR part 146 provide for the participation of commercial table-egg layers, commercial meat-type chickens, and commercial meat-type turkeys in the NPIP and in the U.S. H5/H7 Avian Influenza Monitored classification. The commercial upland game bird and waterfowl industries and the raised-for-release upland game bird and waterfowl industries have expressed interest in controlling H5/H7 avian influenza in their flocks by participating in part 146 and in a U.S. H5/H7 Avian Influenza Monitored classification. In this document, we are proposing to provide for such a classification.

We would add provisions for the participation of these birds in the NPIP in a new Subpart E of part 146, titled ''Special Provisions for Commercial Upland Game Birds, Commercial Waterfowl, Raised-for-Release Upland Game Birds, and Raised-for-Release Waterfowl.'' Specifically, the subpart would provide for the participation of commercial upland game bird slaughter plants, commercial waterfowl slaughter plants, raised-for-release upland game bird premises, and raised-for-release waterfowl premises in the Plan. It would also describe the testing that would be required for commercial upland game bird and commercial waterfowl slaughter plants and raised-for-release upland game bird and waterfowl premises to achieve the U.S. H5/H7 Avian Influenza Monitored classification.

Section 146.51 of this new subpart would define the types of birds to which these special provisions would apply as follows:

Commercial upland game birds. Upland game bird pheasants, quail, or partridges grown under confinement for the primary purpose of producing meat for human consumption.

Commercial waterfowl. Domesticated ducks or geese grown under confinement for the primary purpose of producing meat for human consumption

Raised-for-release upland game birds. Pheasants, quail, and partridge that are raised under confinement for release in game preserves and are not breeding stock.

Raised-for-release waterfowl. Waterfowl that are raised under confinement for release in game preserves and are not breeding stock.

This section defines commercial upland game bird and commercial waterfowl slaughter plants as plants that are federally inspected or under State inspection that FSIS has recognized as equivalent to Federal inspection. It also defines *shift* as: ''The working period of a group of employees who are on duty at the same time.''

Section 146.52, ''Participation,'' would state that participating commercial upland game bird slaughter plants, commercial waterfowl slaughter plants, raised-for-release upland game bird premises, and raised-for-release waterfowl premises shall comply with applicable general provisions of subpart A of part 146 and the special provisions of proposed subpart E, which include the proposed testing requirements. However, the section would provide exemptions from the special provisions of subpart E for:

• Commercial waterfowl and commercial upland game bird slaughter plants that slaughter fewer than 50,000 birds annually.

• Raised-for-release upland game bird premises and raised-for-release

waterfowl premises that raise fewer than 25,000 birds annually.

The proposed size standard for commercial waterfowl and commercial upland game bird slaughter plants is consistent with the National Duck Council's definitions for such plants. The proposed size standard for raised-for-release upland game bird premises and raised-for-release waterfowl premises is consistent with the North American Gamebird Association's definition of a commercial premises of these types.

Section 146.53, ''Terminology and classification; slaughter plants and premises,'' would set out active surveillance requirements for participating commercial upland game bird slaughter plants, commercial waterfowl slaughter plants, raised-for-release upland game bird premises, and raised-for-release waterfowl premises.

Paragraph (a) would set out active surveillance requirements for commercial upland game bird slaughter plants and commercial waterfowl slaughter plants. The active surveillance requirements we are proposing to add in § 146.53(a) are intended for commercial upland game bird slaughter plants and commercial waterfowl slaughter plants that slaughter 50,000 or more of these types of poultry annually. However, smaller commercial upland game bird slaughter plants and commercial waterfowl slaughter plants are eligible to participate in the NPIP, as long as the State in which they are located participates in the NPIP. We believe that diagnostic surveillance in accordance with § 146.14 and inspections in accordance with § 146.11, which are required in the general provisions in subpart A, are adequate to determine whether H5/H7 LPAI is present on such premises.

Under paragraph (a) of proposed § 145.53, a commercial upland game bird slaughter plant or commercial waterfowl slaughter plant would be eligible for the U.S. H5/H7 Avian Influenza Monitored classification if it meets one of the following requirements:

- It is a commercial upland game bird slaughter plant or commercial waterfowl slaughter plant where a minimum of 11 birds per shift are tested negative for the H5/H7 subtypes of avian influenza at slaughter;
- It is a commercial upland game bird slaughter plant or commercial waterfowl slaughter plant that only accepts commercial upland game birds or commercial waterfowl from flocks where a minimum of 11 birds per flock have been tested negative for antibodies to the H5/H7 subtypes of avian influenza no more than 21 days prior to slaughter; or
- It is a commercial upland game bird slaughter plant or commercial waterfowl slaughter plant that has an ongoing active and passive surveillance program for H5/H7 subtypes of avian influenza that is approved by the Official State Agency and the Service.

Both of the first two of these proposed testing requirements would be sufficient to establish the commercial waterfowl or commercial upland game bird slaughter plants as U.S. H5/H7 Avian Influenza Monitored under the Plan, consistent with the other U.S. H5/H7 Avian Influenza Monitored classifications in 9 CFR part 146. Allowing participating slaughter plants to choose between them would give the slaughter plants some flexibility.

Any ongoing active and diagnostic surveillance program that is approved by the Official State Agency and APHIS would have to test a number of birds equivalent to the other two options, but this by itself would not be sufficient to secure approval for the program; the Official State Agency and APHIS would have to agree that the detailed testing plan for the alternate program is sufficient to establish a level of confidence for the detection of AI that is equivalent to that of the other two options. Allowing participating slaughter plants to develop an alternative ongoing active and diagnostic surveillance program of equivalent efficacy would give the plants some additional flexibility.

Paragraph (b) would set out active surveillance requirements for raised-for-release upland game bird premises and raised-for-release waterfowl premises. The active surveillance requirements we are proposing to add in § 146.53(b) are intended for raised-for-release upland game bird premises and raised-for-release waterfowl premises that raise 25,000 or more of these types of poultry annually. However, smaller raised-for-release upland game bird premises and raised-for-release waterfowl premises are eligible to participate in the NPIP, as long as the State in which they are located participates in the NPIP. We believe that diagnostic surveillance in accordance with § 146.14, which is required in the general provisions in subpart A, is adequate to monitor whether H5/H7 LPAI is present on such premises.

Under paragraph (b), a raised-for-release upland game bird premises or raised-for-release waterfowl premises would qualify for the U.S. H5/H7 Avian Influenza Monitored classification when the Official State Agency determines that a representative sample of 30 birds from the participating premises has been tested with negative results for the H5/H7 subtypes of avian influenza every 90 days. This testing would be for premises monitoring purposes and would not be intended to establish the premises as free of the H5/H7 subtypes of avian influenza.

Because this change would expand the ranks of commercial poultry producers who are eligible to participate in the Plan, we would amend the definition of *commercial meat-type flock* in § 146.1 to include commercial upland game birds and commercial waterfowl; amend § 146.3 to reflect the participation of the commercial upland game bird slaughter plants, commercial waterfowl slaughter plants, raised-for-release upland game bird premises, and raised-for-release waterfowl premises; make appropriate changes to § 146.6 to reflect the addition of the two new types of slaughter plants; and amend § 146.9 to indicate that the new participants may use the U.S. H5/H7 Avian Influenza Monitored illustrative design.

We would amend § 147.45 to indicate that each cooperating State is entitled to one delegate for the program we are proposing to describe in a new subpart E in 9 CFR part 146. (In addition, in a final rule that was published in the **Federal Register** on January 12, 2007 (72 FR 1416–1426, Docket No. APHIS–2006–0008), and effective on February 12, 2007, we added new subparts G and H for primary egg-type and meat-type chicken breeding flocks, but neglected to update § 147.45 to indicate that each cooperating State would be entitled to one delegate for each of these subparts. We are proposing to correct that error in this document.) We would also amend § 147.46(a) to establish a committee to give preliminary considerations to proposed changes falling in the field of commercial upland game birds and waterfowl and raised-for-release upland game birds and waterfowl.

Amendment to Standard AGID Test Procedure for Avian Influenza

The regulations in § 147.9(a) describe the standard AGID test procedure for avian influenza. Within § 147.9(a), paragraph (a)(4)(i)(F) describes two options for placing AGID antigen, AI AGID positive control antiserum, and test sera into wells formed in agar on a petri plate. Paragraph (a)(4)(i)(F)(*1*) describes a method (shown in figure 1) in which AGID antigen is placed in the center well, AI AGID positive control antiserum is placed in each of two opposite wells, and test sera are placed in each of the four remaining wells. Paragraph (a)(4)(i)(F)(*2*) describes a method (shown in figure 2) in which

AGID antigen is placed in the center well, AI AGID positive control antiserum is placed in each of three alternate peripheral wells, and test sera are placed in each of the three remaining wells.

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Figure 1.—Immunodiffusion test that uses AI AGID antigen in the center well, AI-positive control serum in wells A and D, and AI-negative test serum in wells B, C, E, and F

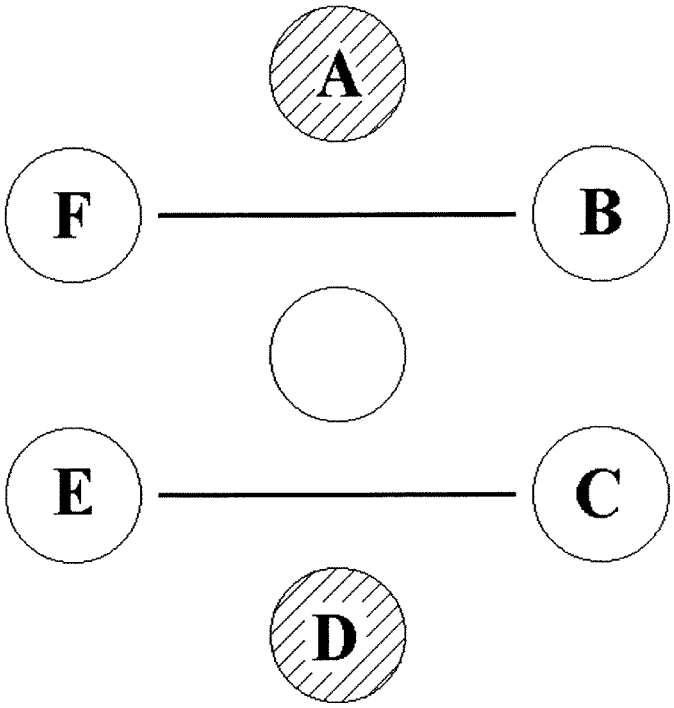
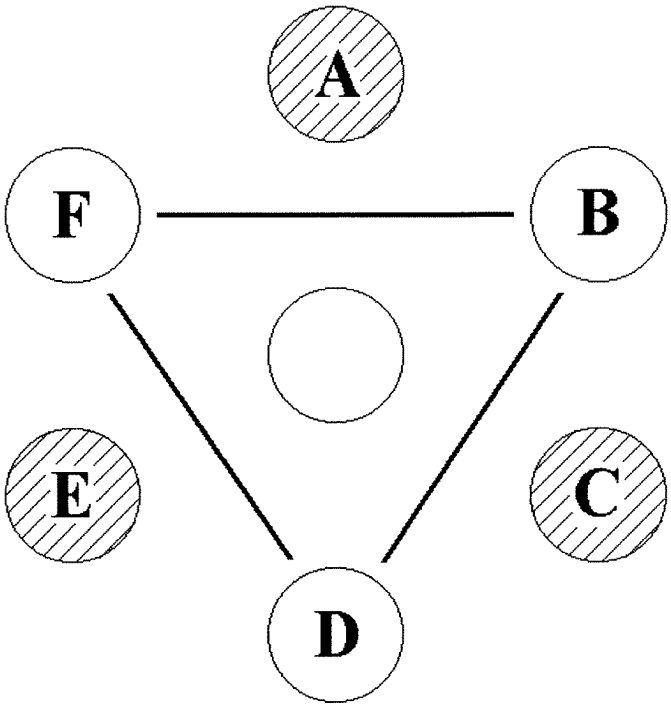


Figure 2.—Immunodiffusion test that has AI AGID antigen in the center well, AI-positive control serum in wells A, C, and E, and AI-negative test serum in wells B, D, and F



BILLING CODE 3410–34–C

The arrangement in figure 1 provides a positive control line on one side of the test serum, thus providing for the development of lines of identity; the arrangement in figure 2 provides a positive control line on each side of the test serum, thus providing for the development of lines of identity on both sides of each test serum. While most positive test sera will result in clear-cut evidence of a positive agar gel reaction, there are times early in AI infection when the test sera may only contain small amounts of antibody. This will cause the tips of the lines of identity to bend slightly inward, which is indicative of a weak positive on the AGID. Having two lines converging towards a test well provides a better opportunity to have an accurate and precise interpretation of the positive reaction or to distinguish a nonspecific reaction.

Therefore, we are proposing to remove the option described in paragraph (a)(4)(i)(F)(*1*) from the regulations. A revised (a)(4)(i)(F) would only set out the second option; figure 1 would be removed, and figures 2 and 3 would be redesignated as figures 1 and 2, respectively.

Laboratory Procedures for New Real-Time Polymerase Chain Reaction Test for Mycoplasma Gallisepticum

Subpart D of 9 CFR part 147 sets out procedures to follow when performing molecular examinations for Plan diseases. We are proposing to add a new description of the laboratory procedures recommended for the real-time polymerase chain reaction (PCR) test for *Mycoplasma gallisepticum* (MGLP ReTi) in § 147.31. The method described in proposed § 147.31 has been published in peer-reviewed journals and validated with over 1,200 samples. It has also been shown to be more sensitive than traditional isolation methods. Adding this testing procedure to the regulations would keep Plan molecular examination procedures current with recent science. A detailed description of the procedure can be found in the text of proposed § 147.31 that appears at the end of this document.

In a related change, we are proposing to add a new paragraph (b)(5) to § 145.14(b), which describes the official tests for *M. gallisepticum* and *M. synoviae.* This new paragraph would state that the official molecular examination procedures for *M. gallisepticum* and *M. synoviae* are the PCR test described in § 147.30 and the real-time PCR test described in proposed § 147.31. Adding this language in § 145.14(b)(5) would clearly indicate that the tests described in § 147.30 and proposed § 147.31 are considered official tests of the Plan.

Amendments to General Conference Committee Description

The regulations in § 147.43(d) describe the duties and functions of the General Conference Committee (GCC) of the National Poultry Improvement Plan in advising and administering the Plan. We are proposing to make two changes in this paragraph:

- Paragraph (d)(4) of § 147.43 provides that the GCC will recommend whether new proposals (i.e., proposals that have not been submitted as provided in § 147.44) should be considered by the delegates to the Plan Conference. We would add that the GCC will consider each proposal submitted as provided in § 147.44 and make recommendations to subpart Committees and the Conference, and that it will meet jointly with the NPIP Technical Committee and consider the technical aspects and accuracy of each proposal. These amendments would reflect current Plan operations.
- Paragraph (d)(6) provides that the GCC will serve as a forum for the study of problems relating to poultry health and as the need arises, to make specific recommendations to the Secretary of Agriculture concerning ways in which the Department may assist the industry in solving these problems. Because the GCC acts as an official advisory committee, we would remove the words ''a forum'' and replace them with the words ''an official advisory committee.''

Authorized Laboratories

In the definitions in §§ 145.1 and 146.1, *authorized laboratory* is defined as a laboratory designated by an Official State Agency, subject to review by the Service, to perform the blood testing and bacteriological examinations provided for in 9 CFR part 145. Under this definition, the Service's review will include, but will not necessarily be limited to, checking records, laboratory protocol, check-test proficiency, periodic duplicate samples, and peer review. A satisfactory review will result in the authorized laboratory being recognized by the Service as a nationally approved laboratory qualified to perform the blood testing and bacteriological examinations provided for in 9 CFR part 145 or the diagnostic assays provided for in 9 CFR part 146.

In this document, we are proposing to add more detailed requirements for authorized laboratories to the regulations. We would establish a new § 147.51 with the heading ''Authorized laboratory minimum requirements.'' This section would be added in a new subpart F with the heading ''Authorized laboratories and approval of tests.''

The introductory text of § 147.51 would state that the section contains minimum requirements that are intended to be the basis on which an authorized laboratory of the Plan can be evaluated to ensure that official Plan assays are performed and reported as described in 9 CFR part 147. A satisfactory evaluation would result in the laboratory being recognized by the NPIP office of the Service as an authorized laboratory qualified to perform the assays provided for in 9 CFR part 147. The minimum requirements would be the following:

- *Check-test proficiency.* The laboratory would have to use a regularly scheduled check test for each assay that it performs. The check test serves to ensure the integrity of the testing procedure as it is being performed in the laboratory.
- *Trained technicians.* The testing procedures at the laboratory would have to be run or overseen by a laboratory technician who has attended and satisfactorily completed Service-approved laboratory workshops for Plan-specific diseases within the past 3 years. This training requirement would ensure that the tests are being run consistently across authorized laboratories.
- *Laboratory protocol.* Official Plan assays would have to be performed and reported as described in 9 CFR part 147.
- *State site visit.* The Official State Agency would conduct a site visit and recordkeeping audit annually.
- *Service review.* Authorized laboratories would be reviewed by the NPIP staff every 3 years. The Service's review might include, but would not necessarily be limited to, checking records, laboratory protocol, check-test proficiency, technician training, and peer review. This requirement (with the exception of the Service checking technician training) is taken from the current definition of *authorized laboratory* in § 145.1.
- *Reporting.* A memorandum of understanding or other means would be used to establish testing and reporting criteria to the Official State Agency, including criteria that provide for reporting H5 and H7 low pathogenic avian influenza directly to the Service. *Salmonella pullorum* and *Mycoplasma* Plan disease reactors would have to be reported to the Official State Agency within 48 hours.
- *Verification.* Random samples could also be required to be submitted for verification as specified by the Official State Agency.

These requirements would ensure that authorized laboratories perform accurate and rigorous testing in the service of Plan programs.

To reflect this change, we would revise the definitions of *authorized laboratory* in §§ 145.1 and 146.1. The new definitions would read: ''An authorized laboratory is a laboratory that meets the requirements of § 147.51 and is thus qualified to perform the assays described in part 147 of this subchapter.''

Miscellaneous Change

In the January 2008 final rule mentioned earlier in this document, we removed and reserved paragraph (b) of § 147.11, which contained footnotes 8 through 11 in 9 CFR part 147. However, we neglected to redesignate the other footnotes in that part to reflect the removal of those four footnotes. In this proposal, we would correct that error by redesignating footnotes 12 through 24 as footnotes 8 through 20.

Executive Order 12866 and Regulatory Flexibility Act

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

We are proposing to amend the Plan and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. The proposed changes were voted on and approved by the voting delegates at the Plan's 2006 National Plan Conference. These changes would keep the provisions of the Plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

The United States is the world's largest poultry producer, the second-largest egg producer, and the largest exporter of poultry meat. U.S. poultry meat production totals over 42 billion pounds annually; over four-fifths is broiler meat, most of the remainder is turkey meat, and a small fraction is other chicken meat. Cash receipts (see table 1) from sales of poultry and eggs (broilers, farm chickens, eggs, turkey, ducks, and other poultry) were about $28.9 billion in 2005 (with preliminary value for 2006 and forecasted value for 2007 being a little higher).[1] Of this total, 72 percent was from broilers, 14 percent from eggs, 11 percent from turkeys, and 3 percent from other poultry.

TABLE 1.—CASH RECEIPTS FOR POULTRY AND EGGS, UNITED STATES, 2000–05, 2006, AND 2007

Commodity	2002	2003	2004	2005	2006 P	2007 F
	$1,000					
Poultry/eggs	21,138,999	23,959,134	29,540,692	28,903,545	27,700,000	29,600,000
Broilers	13,437,700	15,214,945	20,446,096	20,901,934	19,000,000	20,100,000
Farm chickens	49,850	47,508	57,260	63,963	+	+
Chicken eggs	4,232,433	5,273,099	5,239,082	4,000,142	4,400,000	5,100,000
Turkeys	2,643,273	2,631,862	2,995,802	3,157,637	3,500,000	3,500,000
Ducks	15,300	19,200	20,900	21,390	+	+
Other poultry	760,443	772,521	781,553	758,479	800,000	900,000

P = preliminary, F = forecast, + = included in other poultry.
Source: USDA/Economic Research Service (ERS), Farm Income/Farm cash Receipts, 1924–2005, 2006P, and 2007F) *(http://www.ers.usda.gov/data/FarmIncome/finfidmuxls.htm).*

In terms of tonnage, poultry production and trade exceeds that of beef or pork. For instance, in 2006, the U.S. produced 41.4 billion pounds of poultry meat, compared with 26.2 billion pounds of beef and 21 billion pounds of pork. The U.S. also produced 6.5 billion dozen eggs in 2006. Per capita consumption of poultry meat (103.8 pounds in 2006) exceeds per capita consumption of both beef (65.7 pounds) and pork (49.3 pounds). Furthermore, the U.S. exports more poultry meat (5.8 billion pounds in 2006) than beef and veal (1.2 billion pounds) or pork (3 billion pounds).[2]

Broiler production is concentrated in a group of States stretching from Delaware south along the Atlantic coast to Georgia, then westward through Alabama, Mississippi, and Arkansas. The top broiler-producing State is Georgia, followed by Arkansas, Alabama, North Carolina, Mississippi, and Texas. Operations in these States account for over 65 percent of broiler cash receipts.

Most U.S. broiler production is conducted under contract with broiler processors. The grower normally supplies the grow-out house with all the necessary heating, cooling, feeding, and watering systems. The grower also supplies the labor needed in growing the birds. The broiler processor supplies the chicks, feed, and veterinary medicines. The processor schedules transportation of the birds from the farm to the slaughter plant. In many cases, the processor also supplies the crews who place broilers into cages for transportation to the slaughter plant.

The U.S. turkey industry produces over one-quarter of a billion birds annually, with the live weight of each bird averaging over 25 pounds. Production of turkeys is somewhat more scattered geographically than broiler production. The top five turkey-producing States are Minnesota, North Carolina, Missouri, Arkansas, and Virginia. The United States is by far the world's largest turkey producer, followed by the European Union. Even though exports are a major component of the U.S. turkey industry, the United States consumes more turkey per capita than any other country.

U.S. egg operations produce over 77 billion eggs annually. Over three-fourths of egg production is for human consumption (the table-egg market). The remainder of production is for the hatching market. These eggs are hatched to provide replacement birds for the egg-laying flocks and broiler chicks for grow-out operations. The top five egg-producing States are Iowa, Ohio, Pennsylvania, Indiana, and California.[3]

The United States is the world's largest exporter of poultry meat. Annual poultry meat exports totaled about 5.8 billion pounds in 2006, which is about 14.5 percent of U.S. production. (All trade statistics in this and the following

[1] USDA/Economic Research Service (ERS), Farm Income/Cash receipts, 2002–2007.

[2] USDA/ERS, Livestock, Dairy, and Poultry Outlook/LDP–M–158, August 20, 2007.

[3] USDA/ERS, Livestock, Dairy, and Poultry Outlook/LDP–M–158, August 20, 2007.

paragraph are for 2006.) Demand for U.S. poultry meat products has fluctuated over the last several years due to changing economic conditions and currency exchange rates in major importing countries. The largest importers of U.S. broiler products are Russia, Mexico, China, Canada, Hong Kong, Turkey, Taiwan, Angola, South Korea, and Ukraine. Together, these markets accounted for over 74 percent of U.S. poultry meat exports, on a quantity basis. The United States imports only small amounts of poultry meat, accounting for less than two-tenths of 1 percent of domestic production. Over 98 percent of imports come from Canada.

As in the case of poultry meat, U.S. exports of live poultry and exports of fresh shell eggs are widely distributed and significantly outweigh imports of these products. The United States exported 1.302 million eggs and imported 65.4 million eggs in 2006. The major importers of eggs are Canada, Mexico, Jamaica, United Kingdom, Hong Kong, Brazil, Trinidad and Tobago, Dominican Republic, Guyana, and Nicaragua. These countries altogether accounted for about 80 percent of U.S. egg exports. U.S. imports are mainly from Canada, China, France, and Taiwan. These countries together accounted for 91 percent of U.S. imports of eggs. The United States exported 51 million live poultry and imported 13.7 million live poultry in 2006. Major destinations include Canada, Mexico, China, Thailand, Peru, Colombia, Guatemala, Indonesia, Egypt, and El Salvador. These countries accounted for 70 percent of U.S. total live poultry exports. All U.S. imports of live poultry came from Canada, United Kingdom, and Italy.

The decision to participate in the NPIP program is voluntary. Being a participating flock in NPIP has many benefits. These include: The flock being recognized as a participating member of NPIP; the flock having an approval number which may be used on shipping labels, certificates, invoices, and other documents for identification purposes; the flock being listed in the official *NPIP Directory of Participants;* free listing in various State fair brochures; and receiving emergency disease management updates. Furthermore, being a participant in the NPIP allows for greater ease in moving hatching eggs and live birds within a State, across State lines, and into international markets. In fact, most countries will not accept hatching eggs, live birds, table eggs, or broilers unless they can be shown to be from a NPIP participant.

Any increased cost to NPIP participants due to the proposed rule would be minor compared to the expected benefits of the proposed program changes. Additional costs are likely to be minor because most of the participants already had been implementing these changes for several years. Even if additional tests were required, the additional number of birds tested would be very small compared to the size of flocks in the industry. Individual producers will continue to participate in the NPIP program only if the benefits they receive from participation outweigh the costs. Over 99 percent of poultry breeders and hatcheries, commercial table-egg layer flocks, and commercial meat-type chicken and turkey slaughter plants are Plan participants.

Impact on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. According to the Small Business Administration's (SBA's) Office of Advocacy, regulations create economic disparities based on size when they have a significant economic impact on a substantial number of small entities.

Entities engaged in production of breeding stock and hatcheries would be affected by the rule. Currently there are four major firms that produce primary breeding stock of egg-type chickens, three breeders of meat-type chickens, two breeders of turkeys, and one firm producing breeding stock of both egg-type and meat-type chickens.[4] All of these are large facilities headquartered in the United States that operate in domestic and international markets, and would not be considered small entities. Few, if any, small producers would be directly affected by this proposed rule.

Broiler operations (North American Industry Classification System [NAICS] code 112320), turkey operations (NAICS 112330), hatcheries (NAICS 112340), and other poultry operations (112390) could also be affected by the proposed changes. All of these operations are considered to be small if they have annual sales of $750,000 or less (U.S. Small Business Administration Table of Small Business Size Standards, *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*). Commercial egg producers (NAICS 112310) are considered small if they have annual sales of not more than $11.5 million.

The broiler industry has evolved from small backyard flocks to fewer than 50 highly specialized, vertically integrated agribusiness firms. A measure of the changing structure is the number and size of chicken hatcheries. In 1973, there were 989 facilities that hatched all chickens in the United States. Those hatcheries had the capacity to incubate 436 million eggs at one time for an average capacity of 440,849 eggs. In 2006, there were 313 chicken hatcheries, with an incubator capacity of 910 million eggs for an average capacity of 2.9 million eggs. Similarly, there were 203 turkey hatching facilities with capacity to incubate 45 million eggs at one time, for an average capacity of 221,675 eggs. In 2006, there were 55 turkey hatcheries, with an incubator capacity of 39 million eggs for an average capacity of 703,927 eggs.[5]

We do not foresee any significant impact of the proposed rule on small entities. The NPIP is a voluntary program, so poultry producers can decide if it is beneficial for them to participate.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

[4] Mary E. Delany, *Genetic Diversity and Conservation of Poultry,* p.261, in W.M. Muir and S.E. Aggrey, *Poultry Genetics, Breeding and Biotechnology,* August 2003; Susanne Gura, *Livestock Genetics Companies: Concentration and Proprietary Strategies of an Emerging Power in the Global Economy (http://pastoralpeoples.org/docs/Livestock_genetics.pdf).*

[5] USDA, ERS, Hatchery Production, March 1975; Hatchery Production 2006 Summary, April 2007.

List of Subjects in 9 CFR Parts 145, 146, and 147

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

Accordingly, we propose to amend 9 CFR parts 145, 146, and 147 as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN FOR BREEDING POULTRY

1. The authority citation for part 145 continues to read as follows:

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

2. Section 145.1 is amended as follows:

a. By revising the definition of *authorized laboratory* to read as set forth below.

b. By adding, in alphabetical order, new definitions of *NPIP Technical Committee* and *Senior Coordinator* to read as set forth below.

c. In the definition of *equivalent or equivalent requirements*, by adding the words ''or exceed'' after the words ''equal to'' and the words ''they are'' after the words ''with which.''

§ 145.1 Definitions.

* * * * *

Authorized laboratory. An authorized laboratory is a laboratory that meets the requirements of § 147.51 and is thus qualified to perform the assays described in part 147 of this subchapter.

* * * * *

NPIP Technical Committee. A committee made up of technical experts on poultry health, biosecurity, surveillance, and diagnostics. The committee consists of representatives from the poultry and egg industries, universities, and State and Federal governments and is appointed by the Senior Coordinator and approved by the General Conference Committee.

* * * * *

Senior Coordinator. An employee of the Service whose duties may include, but will not necessarily be limited to:

(1) Serving as executive secretary of the General Conference Committee;

(2) Serving as chairperson of the Plan Conference described in § 147.47;

(3) Planning, organizing, and conducting the Plan Conference;

(4) Reviewing NPIP authorized laboratories as described in § 147.51;

(5) Coordinating the State administration of the NPIP through periodic reviews of the administrative procedures of the Official State Agencies, according to the applicable provisions of the Plan and the Memorandum of Understanding;

(6) Coordinating rulemaking to incorporate the proposed changes of the provisions approved at the Plan conference into the regulations in parts 145, 146, and 147 of this subchapter;

(7) Directing the production of official NPIP publications;

(8) Proposing an annual budget for plan activities and the General Conference Committee; and

(9) Providing overall administration of the NPIP.

* * * * *

3. In § 145.2, paragraph (a) is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 145.2 Administration.

(a) * * * In the Memorandum of Understanding, the Official State Agency must designate a contact representative to serve as a liaison between the Service and the Official State Agency.

* * * * *

4. Section 145.14 is amended as follows:

a. By adding a new paragraph (b)(5) to read as set forth below.

b. By revising paragraph (d) to read as set forth below.

§ 145.14 Blood testing.

* * * * *

(b) * * *

(5) The official molecular examination procedures for *Mycoplasma gallisepticum* and *M. synoviae* are the polymerase chain reaction (PCR) test described in § 147.30 of this subchapter and the real-time PCR test described in § 147.31 of this subchapter.

* * * * *

(d) *For avian influenza.* The official tests for avian influenza are described in paragraphs (d)(1) and (d)(2) of this section.

(1) *Antibody detection tests*—(i) *Enzyme-linked immunosorbent assay (ELISA).* ELISA must be conducted using test kits approved by the Department and the Official State Agency and must be conducted in accordance with the recommendations of the producer or manufacturer.

(ii) *The agar gel immunodiffusion (AGID) test.* (A) The AGID test must be conducted on all ELISA-positive samples.

(B) The AGID test must be conducted using reagents approved by the Department and the Official State Agency.

(C) Standard test procedures for the AGID test for avian influenza are set forth in § 147.9 of this subchapter. The test can be conducted on egg yolk or blood samples.

(D) Positive tests for the AGID must be further tested by Federal Reference Laboratories using appropriate tests for confirmation. Final judgment may be based upon further sampling and appropriate tests for confirmation.

(2) *Agent detection tests.* Tests that detect influenza A matrix gene or protein may be performed by an authorized laboratory. Tests that determine hemagglutinin or neuraminidase subtypes may not be performed by an authorized laboratory. Samples for agent detection testing should be collected from naturally occurring flock mortality or clinically ill birds.

(i) *The real time reverse transcriptase/polymerase chain reaction (RRT–PCR) assay.* (A) The RRT–PCR tests must be conducted using reagents approved by the Department and the Official State Agency. The RRT–PCR must be conducted using the National Veterinary Services Laboratories (NVSL) official protocol for RRT–PCR (AVPR01510) and must be conducted by personnel who have passed an NVSL proficiency test.

(B) Positive results from the RRT–PCR must be further tested by Federal Reference Laboratories using appropriate tests for confirmation. Final judgment may be based upon further sampling and appropriate tests for confirmation.

(ii) *USDA-licensed type A influenza antigen capture immunoassay (ACIA).* (A) The USDA-licensed type A influenza ACIA must be conducted using test kits approved by the Department and the Official State Agency and must be conducted in accordance with the recommendations of the producer or manufacturer.

(B) Positive results from the ACIA must be further tested by Federal Reference Laboratories using appropriate tests for confirmation. Final judgment may be based upon further sampling and appropriate tests for confirmation.

(3) The official determination of a flock as positive for the H5 or H7 subtypes of avian influenza may be made only by NVSL.

* * * * *

5. Section 145.15 is revised to read as follows:

§ 145.15 Diagnostic surveillance program for low pathogenic avian influenza.

(a) The Official State Agency must develop a diagnostic surveillance program for H5/H7 low pathogenic avian influenza for all poultry in the State. The exact provisions of the program are at the discretion of the States. The Service will use the standards in paragraph (b) of this

section in assessing individual State plans for adequacy, including the specific provisions that the State developed. The standards should be used by States in developing those plans.

(b) Avian influenza must be a disease reportable to the responsible State authority (State veterinarian, etc.) by all licensed veterinarians. To accomplish this, all laboratories (private, State, and university laboratories) that perform diagnostic procedures on poultry must examine all submitted cases of unexplained respiratory disease, egg production drops, and mortality for avian influenza by both an approved serological test and an approved antigen detection test. Memoranda of understanding or other means must be used to establish testing and reporting criteria (including criteria that provide for reporting H5 and H7 low pathogenic avian influenza directly to the Service) and approved testing methods. In addition, States should conduct outreach to poultry producers, especially owners of smaller flocks, regarding the importance of prompt reporting of clinical symptoms consistent with avian influenza.

§ 145.23 [Amended]

6. In § 145.23, paragraphs (h)(2)(i) and (h)(2)(ii) are amended by removing the number ''180'' and replacing it with the number ''90'' each time it occurs.

§ 145.33 [Amended]

7. In § 145.33, paragraphs (l)(2)(i) and (l)(2)(ii) are amended by removing the number ''30'' and replacing it with the number ''15'' each time it occurs; and by removing the number ''180'' and replacing it with the number ''90'' each time it occurs

§ 145.43 [Amended]

8. In § 145.43, paragraphs (g)(2)(i) and (g)(2)(ii) are amended by removing the number ''180'' and replacing it with the number ''90'' each time it occurs.

9. In § 145.52, paragraph (c) is revised to read as follows:

§ 145.52 Participation.

* * * * *

(c) Subject to the approval of the Service and the Official State Agencies in the importing and exporting States, participating flocks may report poultry sales to importing States by using either VS Form 9–3, ''Report of Sales of Hatching Eggs, Chicks, and Poults'' or by using a hatchery invoice form (9–3I) approved by the Official State Agency and the Service to identify poultry sales to clients. If the selling hatchery uses the 9–3I form, the following information must be included on the form:

(1) The form number ''9–3I'', printed or stamped on the invoice;

(2) The hatchery name and address;

(3) The date of shipment;

(4) The hatchery invoice number;

(5) The purchaser name and address;

(6) The quantity of products sold;

(7) Identification of the products by bird variety or by NPIP stock code as listed in the NPIP APHIS 91–55–078 appendix; and

(8) The appropriate NPIP illustrative design in § 145.10. One of the designs in § 145.10(b) or (g) must be used. The following information must be provided in or near the NPIP design:

(i) The NPIP State number and NPIP hatchery approval number; and

(ii) The NPIP classification for which product is qualified (*e.g.*, U.S. Pullorum-Typhoid Clean).

* * * * *

10. In § 145.63, a new paragraph (b) is added to read as follows:

§ 145.63 Terminology and classification; flocks and products.

* * * * *

(b) *U.S. Avian Influenza Clean.* This program is intended to be the basis from which the breeding-hatchery industry may conduct a program for the prevention and control of avian influenza. It is intended to determine the presence of avian influenza in all ostrich, emu, rhea, and cassowary breeding flocks through routine serological surveillance of each participating breeding flock. Acceptable tests include antigen and antibody detection tests, as approved by the Official State Agency. A flock, and the hatching eggs and chicks produced from it, will qualify for this classification when the Official State Agency determines that it has met one of the following requirements:

(1) It is a primary breeding flock in which 10 percent of the flock, up to a maximum of 30 birds, has been tested negative for type A influenza virus with all pens represented equally and when the tested birds are more than 4 months of age. Positive samples shall be further tested by an authorized laboratory. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 180 days, or

(ii) A sample of less than 10 percent of the birds up to a maximum of 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds are tested within each 180-day period.

(2) It is a multiplier breeding flock in which a minimum of 30 birds has been tested negative to type A influenza virus with all pens represented equally and when the tested birds are more than 4 months of age. Positive samples shall be further tested by an authorized laboratory. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 180 days, or

(ii) A sample of at least 10 percent of birds from each pen with all pens being represented must be tested negative at intervals of 180 days; or

(iii) A sample of less than 10 percent of the birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 10 percent of the birds are tested within each 180-day period.

PART 146—NATIONAL POULTRY IMPROVEMENT PLAN FOR COMMERCIAL POULTRY

11. The authority citation for part 146 continues to read as follows:

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

12. Section 146.1 is amended as follows:

a. By revising the definition of *authorized laboratory* and the first sentence of the definition of *commercial meat-type flock* to read as set forth below.

b. In the definition of *equivalent*, by adding the words ''or exceed'' after the words ''equal to'' and the words ''they are'' after the words ''with which.''

§ 146.1 Definitions.

* * * * *

Authorized laboratory. An authorized laboratory is a laboratory that meets the requirements of § 147.51 and is thus qualified to perform the assays described in part 147 of this subchapter.

* * * * *

Commercial meat-type flock. All of the meat-type chickens, meat-type turkeys, commercial upland game birds, or commercial waterfowl on one farm.

* * *

* * * * *

13. In § 146.2, paragraph (a) is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 146.2 Administration.

(a) * * * In the Memorandum of Understanding, the Official State Agency must designate a contact representative to serve as a liaison between the Service and the Official State Agency.

* * * * *

14. Section 146.3 is amended by revising paragraph (a) and the first

sentence of paragraph (c) to read as follows:

§ 146.3 Participation.

(a) Any table-egg producer, raised-for-release upland game bird premises, and raised-for-release waterfowl premises and any commercial upland game bird, commercial waterfowl, meat-type chicken or meat-type turkey slaughter plant, including its affiliated flocks, may participate in the Plan when the producer or plant has demonstrated, to the satisfaction of the Official State Agency, that its facilities, personnel, and practices are adequate for carrying out the relevant special provisions of this part and has signed an agreement with the Official State Agency to comply with the relevant special provisions of this part.

* * * * *

(c) A participating slaughter plant shall participate with all of the commercial upland game bird, commercial waterfowl, meat-type chicken and/or meat-type turkey flocks that are processed at the facility, including affiliated flocks. * * *

* * * * *

15. Section 146.6 is revised to read as follows:

§ 146.6 Specific provisions for participating slaughter plants.

(a) Only commercial upland game bird, commercial waterfowl, meat-type chicken, and meat-type turkey slaughter plants that are under continuous inspection by the Food Safety and Inspection Service of the Department or under State inspection that the Food Safety and Inspection Service has recognized as equivalent to Federal inspection may participate in the Plan.

(b) To participate in the Plan, meat-type chicken, meat-type turkey, and commercial upland game bird and commercial waterfowl slaughter plants must follow the relevant special provisions in §§ 146.33(a), 146.43(a), and 146.53(a), respectively, for sample collection and flock monitoring, unless they are exempted from the special provisions under §§ 146.32(b), 146.42(b), or 146.52(b), respectively.

§ 146.9 [Amended]

16. In § 146.9, paragraph (a) is amended by removing the word ''and'' and adding the words '', and 146.53(a) and (b)'' at the end of the second sentence, before the period.

17. Section 146.11 is amended as follows:

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

b. By redesignating paragraphs (b) and (c) as (d) and (e), respectively.

c. By adding new paragraphs (b) and (c) to read as set forth below.

§ 146.11 Inspections.

(a) Each participating slaughter plant shall be audited at least once annually or a sufficient number of times each year to satisfy the Official State Agency that the participating slaughter plant is in compliance with the provisions of this part. The yearly audit will consist of an evaluation of 2 weeks' worth of records, selected at random, of the following data:

(1) The actual flock slaughter date for each flock. This information must come from a verifiable source. Verifiable sources include electronic record systems that have oversight from the Department's Grain Inspectors, Packers and Stockyards Administration or Food Safety and Inspection Service (FSIS) documents such as FSIS Form 9061–2.

(2) Laboratory test results for each flock slaughtered with the sample collection date and test result. The test must be NPIP approved and performed in an authorized laboratory of the NPIP.

(b) A flock will be considered to be not conforming to protocol if there are no test results available, if the flock was not tested within 21 days before slaughter, or if the test results for the flocks were not returned before slaughter.

(c) Two or more flocks that are found to be not conforming to protocol in the yearly audit for a slaughter plant shall be cause for a deficiency rating for that plant. However, if the root cause for the deficiency was identified, corrected, and documented, the plant will be eligible for an immediate reevaluation of 2 additional weeks' worth of records, again selected at random. If no more than one missed flock is identified in this reevaluation, the plant will be considered in compliance and no further action will be required. Plants found to be deficient must provide a written corrective action plan to the auditor within 2 weeks of receipt of the deficiency rating. A followup audit on the information in paragraphs (a)(1) and (a)(2) of this section will occur within 90 days from the receipt of the corrective action plan. Slaughter plants will retain their classification and may continue to use the Plan emblem in § 149.9(a) during this process. A failure on the followup audit may result in disbarment from participation according to the procedures in § 146.12.

* * * * *

18. In § 146.13, paragraph (b) is revised to read as follows:

§ 146.13 Testing.

* * * * *

(b) *Avian influenza.* The official tests for avian influenza are described in paragraphs (b)(1) and (b)(2) of this section:

(1) *Antibody detection tests*—(i) *Enzyme-linked immunosorbent assay (ELISA).* ELISA must be conducted using test kits approved by the Department and the Official State Agency and must be conducted in accordance with the recommendations of the producer or manufacturer.

(ii) *The agar gel immunodiffusion (AGID) test.* (A) The AGID test must be conducted on all ELISA-positive samples.

(B) The AGID test must be conducted using reagents approved by the Department and the Official State Agency.

(C) Standard test procedures for the AGID test for avian influenza are set forth in § 147.9 of this subchapter. The test can be conducted on egg yolk or blood samples.

(D) Positive tests for the AGID must be further tested by Federal Reference Laboratories using appropriate tests for confirmation. Final judgment may be based upon further sampling and appropriate tests for confirmation.

(2) *Agent detection tests.* Tests that detect influenza A matrix gene or protein may be performed by an authorized laboratory. Tests that determine hemagglutinin or neuraminidase subtypes may not be performed by an authorized laboratory. Samples for this testing should be collected from naturally occurring flock mortality or clinically ill birds.

(i) *The real time reverse transcriptase/polymerase chain reaction (RRT–PCR) assay.* (A) The RRT–PCR tests must be conducted using reagents approved by the Department and the Official State Agency. The RRT–PCR must be conducted using the National Veterinary Services Laboratories (NVSL) official protocol for RRT–PCR (AVPR01510) and must be conducted by personnel who have passed an NVSL proficiency test.

(B) Positive results from the RRT–PCR must be further tested by Federal Reference Laboratories using appropriate tests for confirmation. Final judgment may be based upon further sampling and appropriate tests for confirmation.

(ii) *USDA-licensed type A influenza antigen capture immunoassay (ACIA).* (A) The USDA-licensed type A influenza ACIA must be conducted using test kits approved by the Department and the Official State Agency and must be conducted in accordance with the recommendations of the producer or manufacturer.

(B) Positive results from the ACIA must be further tested by Federal Reference Laboratories using appropriate tests for confirmation. Final judgment may be based upon further sampling and appropriate tests for confirmation.

(3) The official determination of a flock as positive for the H5 or H7 subtypes avian influenza may be made only by NVSL.

19. In § 146.43, in paragraph (a)(1), the first sentence is revised to read as follows:

§ 146.43 Terminology and classification; meat-type turkey slaughter plants.

* * * * *

(a) * * *

(1) It is a meat-type turkey slaughter plant that accepts only meat-type turkeys from flocks where a minimum of 6 birds per flock has tested negative for antibodies to type A avian influenza virus with an approved test no more than 21 days prior to slaughter. * * * * * * * * *

20. A new subpart E, ''Special Provisions for Commercial Upland Game Birds, Commercial Waterfowl, Raised-for-Release Upland Game Birds, and Raised-for-Release Waterfowl,'' §§ 146.51 through 146.53, is added to read as follows:

Subpart E—Special Provisions for Commercial Upland Game Birds, Commercial Waterfowl, Raised-for-Release Upland Game Birds, and Raised-for-Release Waterfowl

Sec.

Subpart E—Special Provisions for Commercial Upland Game Birds, Commercial Waterfowl, Raised-for-Release Upland Game Birds, and Raised-for-Release Waterfowl

§ 146.51 Definitions.

Commercial upland game bird slaughter plant. A commercial upland game bird slaughter plant that is federally inspected or under State inspection that the U.S. Department of Agriculture's Food Safety and Inspection Service has recognized as equivalent to Federal inspection.

Commercial upland game birds. Upland game bird pheasants, quail, or partridges grown under confinement for the primary purpose of producing meat for human consumption.

Commercial waterfowl. Domesticated ducks or geese grown under confinement for the primary purpose of producing meat for human consumption.

Commercial waterfowl slaughter plant. A commercial waterfowl slaughter plant that is federally inspected or under State inspection that the U.S. Department of Agriculture's Food Safety and Inspection Service has recognized as equivalent to Federal inspection.

Raised-for-release upland game birds. Pheasants, quail, and partridge that are raised under confinement for release in game preserves and are not breeding stock.

Raised-for-release waterfowl. Waterfowl that are raised under confinement for release in game preserves and are not breeding stock.

Shift. The working period of a group of employees who are on duty at the same time.

§ 146.52 Participation.

(a) Participating commercial upland game bird slaughter plants, commercial waterfowl slaughter plants, raised-for-release upland game bird premises, and raised-for-release waterfowl premises shall comply with the applicable general provisions of Subpart A of this part and the special provisions of this subpart E.

(b) Commercial waterfowl and commercial upland game bird slaughter plants that slaughter fewer than 50,000 birds annually are exempt from the special provisions of this subpart E.

(c) Raised-for-release upland game bird premises and raised-for-release waterfowl premises that raise fewer than 25,000 birds annually are exempt from the special provisions of this subpart E.

§ 146.53 Terminology and classification; slaughter plants and premises.

Participating flocks which have met the respective requirements specified in this section may be designated by the following terms and the corresponding designs illustrated in § 146.9 of this part:

(a) *U.S. H5/H7 Avian Influenza Monitored.* This program is intended to be the basis from which the commercial waterfowl and commercial upland game bird industry may conduct a program to monitor for the H5/H7 subtypes of avian influenza. It is intended to determine the presence of the H5/H7 subtypes of avian influenza in commercial waterfowl and commercial upland game birds through routine surveillance of each participating slaughter plant. A slaughter plant will qualify for this classification when the Official State Agency determines that it has met one of the following requirements:

(1) It is a commercial upland game bird slaughter plant or commercial waterfowl slaughter plant where a minimum of 11 birds per shift are tested negative for the H5/H7 subtypes of avian influenza at slaughter;

(2) It is a commercial upland game bird slaughter plant or commercial waterfowl slaughter plant that only accepts commercial upland game birds or commercial waterfowl from flocks where a minimum of 11 birds per flock have been tested negative for antibodies to the H5/H7 subtypes of avian influenza no more than 21 days prior to slaughter; or

(3) It is a commercial upland game bird slaughter plant or commercial waterfowl slaughter plant that has an ongoing active and passive surveillance program for H5/H7 subtypes of avian influenza that is approved by the Official State Agency and the Service.

(b) *U.S. H5/H7 Avian Influenza Monitored.* This program is intended to be the basis from which the raised-for-release upland game bird and raised-for-release waterfowl industries may conduct a program to monitor for the H5/H7 subtypes of avian influenza. It is intended to determine the presence of the H5/H7 subtypes of avian influenza through routine surveillance of each participating premises. A premises will qualify for the classification when the Official State Agency determines that a representative sample of 30 birds from the participating premises has been tested with negative results for the H5/H7 subtypes of avian influenza every 90 days.

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

21. The authority citation continues to read as follows:

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

22. Section 147.9 is amended as follows:

a. By revising paragraph (a)(4)(i)(F) to read as follows.

b. By removing figure 1.

c. By redesignating figures 2 and 3 as figures 1 and 2, respectively.

§ 147.9 Standard test procedures for avian influenza.

(a) * * *

(4) * * *

(i) * * *

(F) To prepare the wells, place 50 µl of avian influenza AGID antigen in the center well using a micropipette with an attached pipette tip. Place 50 µl AI AGID positive control antiserum in each of three alternate peripheral wells, and add 50 µl per well of test sera in the three remaining wells. This arrangement provides a positive control line on each

side of the test serum, thus providing for the development of lines of identity on both sides of each test serum (see figure 1).

Note: A pattern can be included with positive, weak positive, and negative reference serum in the test sera wells to aid in the interpretation of results (see figure 2).

* * * * *

§§ 147.12, 147.14, 147.15, 147.16, 147.30 [Amended]

23. Sections 147.12, 147.14, 147.15, 147.16, and 147.30 are amended by redesignating footnotes 12 through and 24 as footnotes 8 through 20, respectively.

24. A new § 147.31 is added to read as follows:

§ 147.31 Laboratory procedures recommended for the real-time polymerase chain reaction test for Mycoplasma gallisepticum (MGLP ReTi).

(a) *DNA extraction.* Use Qiagen Qiamp Mini Kit for DNA extraction or equivalent validated technique/procedure. This kit utilizes the following methods: 100 µl of swab suspension incubates with 10 µl of proteinase K and 400 µl of lysis buffer at 56 °C for 10 minutes. Following incubation, 100 µl of 100 percent ethanol is added to lysate. Wash and centrifuge following extraction kit recommendations.

(b) *Primer selection.* A forward primer mglpU26 (5′–CTA GAG GGT TGG ACA GTT ATG–3′) located at nucleotide positions 765,566 to 765,586 of the *M. gallisepticum* R strain genome sequence; a reverse primer mglp164 (5′–GCT GCA CTA AAT GAT ACG TCA AA–3′) located at nucleotide positions 765,448 to 765,470 of the *M. gallisepticum* R strain genome sequence; and a Taqman dual-labeled probe mglpprobe (5′–FAM–CAG TCA TTA ACA ACT TAC CAC CAG AAT CTG–BHQ1–3′) located at nucleotide positions 765,491 to 765,520 of the *M. gallisepticum* R strain genome should be used to amplify a 13-bp fragment of the lp gene.

(c) *MGLP ReTi.* Primers and probe should be utilized in a 25 µl reaction containing 12.5 µl of Quantitect Probe PCR 2X mix (Qiagen, Valencia, CA),[21] primers to a final concentration of 0.5 µmolar, and probe to a final concentration of 0.1 µmolar, 1 µl of HK–UNG Thermolabile Uracil N–glycosylase (Epicentre, Madison, WI), 2 µl of water, and 5 µl of template. The reaction can be performed in a SmartCycler (Cepheid, Sunnyvale, CA) or other equivalent validated platform procedure for real-time thermocycler at 50 °C for 2 minutes; 95 °C for 15 minutes with optics OFF; and 40 cycles of 94 °C for 15 seconds followed by 60 °C for 60 seconds with optics ON.

(d) *Determination of positive.* For each MGLP ReTi assay reaction, the threshold cycle number (CT value) was determined to be the PCR cycle number at which the fluorescence of the reaction exceeded 30 units of fluorescence. For all samples tested, any MGLP reaction that has a recorded CT value was considered positive, while any MGLP reaction that had no recorded CT value was considered negative.

(e) *Controls.* Proper controls should be used when conducting the MGLP ReTi assay as an official test of the Plan. Positive, quantitative, extraction, and internal controls are commercially available from GTCAllison, LLC, Mocksville, NC.

25. Section 147.43 is amended as follows:

a. By revising paragraph (d)(4) to read as set forth below.

b. In paragraph (d)(6), by removing the words ''a forum'' and adding the words ''an official advisory committee'' in their place.

§ 147.43 General Conference Committee.

* * * * *

(d) * * *

(4) Consider each proposal submitted as provided in § 147.44 and make recommendations to subpart Committees and the Conference. Meet jointly with the NPIP Technical Committee and consider the technical aspects and accuracy of each proposal. Recommend whether new proposals (i.e., proposals that have not been submitted as provided in § 147.44) should be considered by the delegates to the Plan Conference.

* * * * *

26. In § 147.45, the first sentence is revised to read as follows:

§ 147.45 Official delegates.

Each cooperating State shall be entitled to one official delegate for each of the programs prescribed in subparts B, C, D, E, F, G, and H of part 145 of this chapter and for each of the programs prescribed in subparts B, C, D, and E of part 146 of this chapter in which it has one or more participants at the time of the Conference. * * *

27. In § 147.46, a new paragraph (a)(9) is added to read as follows:

§ 147.46 Committee consideration of proposed changes.

(a) * * *

(9) Commercial upland game birds and waterfowl and raised-for-release upland game birds and waterfowl.

* * * * *

28. A new Subpart F, ''Authorized Laboratories and Approved Tests,'' §§ 147.51 and 147.52, is added to read as follows:

Subpart F—Authorized Laboratories and Approved Tests

Sec.

Subpart F—Authorized Laboratories and Approved Tests

§ 147.51 Authorized laboratory minimum requirements.

These minimum requirements are intended to be the basis on which an authorized laboratory of the Plan can be evaluated to ensure that official Plan assays are performed and reported as described in this part. A satisfactory evaluation will result in the laboratory being recognized by the NPIP office of the Service as an authorized laboratory qualified to perform the assays provided for in this part.

(a) *Check-test proficiency.* The laboratory must use a regularly scheduled check test for each assay that it performs.

(b) *Trained technicians.* The testing procedures at the laboratory must be run or overseen by a laboratory technician who has attended and satisfactorily completed Service-approved laboratory workshops for Plan-specific diseases within the past 3 years.

(c) *Laboratory protocol.* Official Plan assays must be performed and reported as described in this part.

(d) *State site visit.* The Official State Agency will conduct a site visit and recordkeeping audit annually.

(e) *Service review.* Authorized laboratories will be reviewed by the Service (NPIP staff) every 3 years. The Service's review may include, but will not necessarily be limited to, checking records, laboratory protocol, check-test proficiency, technician training, and peer review.

(f) *Reporting.* (1) A memorandum of understanding or other means shall be used to establish testing and reporting criteria to the Official State Agency, including criteria that provide for reporting H5 and H7 low pathogenic avian influenza directly to the Service.

(2) *Salmonella pullorum* and *Mycoplasma* Plan disease reactors must be reported to the Official State Agency within 48 hours.

(g) *Verification.* Random samples may also be required to be submitted for

[21] Trade names are used in these procedures solely for the purpose of providing specific information. Mention of a trade name does not constitute a guarantee or warranty of the product by the U.S. Department of Agriculture or an endorsement over other products not mentioned.

verification as specified by the Official State Agency.

§ 147.52 Approved tests.

(a) The procedures for the bacteriological examination of poultry and poultry environments described in this part are approved tests for use in the NPIP. In addition, all tests that use veterinary biologics (e.g., antiserum and other products of biological origin) that are licensed or produced by the Service and used as described in this part are approved for use in the NPIP.

(b) Diagnostic test kits that are not licensed by the Service (e.g., bacteriological culturing kits) may be approved through the following procedure:

(1) The sensitivity of the kit will be estimated in at least three authorized laboratories selected by the Service by testing known positive samples, as determined by the official NPIP procedures found in Subparts A, B, C, and D of this part. If certain conditions or interfering substances are known to affect the performance of the kit, appropriate samples will be included so that the magnitude and significance of the effect(s) can be evaluated.

(2) The specificity of the kit will be estimated in at least three authorized laboratories selected by the Service by testing known negative samples, as determined by the official NPIP procedures found in this part. If certain conditions or interfering substances are known to affect the performance of the kit, appropriate samples will be included so that the magnitude and significance of the effect(s) can be evaluated.

(3) The kit will be provided to the cooperating laboratories in its final form and include the instructions for use. The cooperating laboratories must perform the assay exactly as stated in the supplied instructions. Each laboratory must test a panel of at least 25 known positive clinical samples supplied by the manufacturer of the test kit. In addition, each laboratory will be asked to test 50 known negative clinical samples obtained from several sources, to provide a representative sampling of the general population. The identity of the samples must be coded so that the cooperating laboratories are blinded to identity and classification. Each sample must be provided in duplicate or triplicate, so that error and repeatability data may be generated.

(4) Cooperating laboratories will submit to the kit manufacturer all raw data regarding the assay response. Each sample tested will be reported as positive or negative, and the official NPIP procedure used to classify the sample must be submitted in addition to the assay response value.

(5) The findings of the cooperating laboratories will be evaluated by the NPIP technical committee, and the technical committee will make a recommendation regarding whether to approve the test kit to the General Conference Committee. If the technical committee recommends approval, the final approval will be granted in accordance with the procedures described in §§ 147.46 and 147.47.

Done in Washington, DC, this 20th day of May 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–11739 Filed 5–27–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–8–010]

Revised Public Utility Filing Requirements for Electric Quarterly Reports

May 19, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice seeking comments on proposed revisions to Electric Quarterly Report (EQR) data dictionary.

SUMMARY: In this notice, the Federal Energy Regulatory Commission (Commission) proposes to revise the EQR Data Dictionary to clarify the definition of Contract Commencement date. If adopted, this proposal will make reporting this information less burdensome and more accessible.

DATES: Comments on the proposal are due June 27, 2008.

ADDRESSES: You may submit comments on the proposal, identified by Docket No. RM01–8–010, by one of the following methods:

- *Agency Web Site: http://www.ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.
- *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

Michelle Veloso (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8363.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8321.

SUPPLEMENTARY INFROMATION:

1. The Commission is proposing to revise the Electric Quarterly Report (EQR) Data Dictionary to clarify the definition of Contract Commencement Date in Field 22.

Background

2. On April 25, 2002, the Commission issued Order No. 2001, a Final Rule establishing revised public utility filing requirements.[1] This rule revised the Commission's filing requirements to require companies subject to the Commission's regulations under section 205 of the Federal Power Act[2] to file quarterly reports that: (1) Provide data identifying the utility on whose behalf the report is being filed (ID Data); (2) summarize pertinent data about the utility's currently effective contracts (Contract Data); and (3) summarize data about wholesale power sales the utility made during the reporting period (Transaction Data). The requirement to file EQRs replaced the requirement to file quarterly transaction reports summarizing a utility's market-based rate transactions and sales agreements that conformed to the utility's tariff.

3. In Order No. 2001, the Commission also adopted a new section in its regulations, 18 CFR 35.10b, which requires that the EQRs are to be prepared in conformance with the Commission's software and guidance posted and available from the Commission website. This obviates the need to revise 18 CFR 35.10b to implement revisions to the software and

[1] *Revised Public Utility Filing Requirements,* Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (Apr. 25, 2002), *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reconsideration and clarification denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filings,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), Order No. 2001–D, *order directing filings,* 102 FERC 61,334, Order No. 2001–E, *order refining filing requirements,* 105 FERC ¶ 61,352 (2003), *clarification order,* Order No.2001–F, 106 FERC ¶ 61,060 (2004), *order adopting EQR Data Dictionary,* Order No. 2001–G, 120 FERC ¶ 61,270 (2007), *order on reh'g and clarification,* Order No. 2001–H, 121 FERC ¶ 61,289 (2007).

[2] 16 U.S.C. 824d.