

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Part 53****[Docket No. 01-069-1]****RIN 0579-AB34****Foot-and-Mouth Disease Payment of Indemnity; Update of Provisions****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations pertaining to the control and eradication of foot-and-mouth disease and other serious diseases, including for both cooperative programs and extraordinary emergencies.

Specifically, we are proposing changes in indemnity provisions primarily related to foot-and-mouth disease. The proposed changes are prompted, in part, by a review of the regulations in light of the recent series of outbreaks of foot-and-mouth disease in the United Kingdom and elsewhere around the world. We believe these changes are necessary to ensure the success of a control and eradication program in the event of an occurrence of foot-and-mouth disease in the United States.

**DATES:** We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 1, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01-069-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 01-069-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01-069-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

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

**FOR FURTHER INFORMATION CONTACT:** Dr. Mark E. Teachman, Senior Staff Veterinarian, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737-1231; (301) 734-8073.

**SUPPLEMENTARY INFORMATION:****Background**

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA or the Department) administers regulations at 9 CFR part 53 (referred to below as the regulations) that provide for the payment of indemnity to owners of animals that are required to be destroyed because of foot-and-mouth disease, pleuropneumonia, rinderpest, exotic Newcastle disease, highly pathogenic avian influenza, infectious salmon anemia or any other communicable disease of livestock or poultry that in the opinion of the Secretary of Agriculture constitutes an emergency and threatens the U.S. livestock or poultry population. The regulations authorize payments to be based on the fair market value of the animals destroyed, as well as payments for their destruction and disposal. The regulations also authorize payments for materials that must be cleaned and disinfected or destroyed because of being contaminated by or exposed to disease.

We recently reviewed the regulations to determine their adequacy in the event of an occurrence of foot-and-mouth disease (FMD). This review was prompted, in part, by the recent series of outbreaks of FMD in the United Kingdom and elsewhere around the world. An occurrence of FMD in the United States could be devastating given the Nation's extensive holdings of livestock, poultry, and other animals. Besides the direct effects on producers of susceptible animals, the consequences of the disease could ripple throughout the economy, causing indirect costs in other sectors.

As a result of this review, we are proposing changes to the regulations relating to the valuation of animals and materials and the payment of indemnity to claimants that relate primarily to FMD. We do not cover in this proposed rule these specific cooperative arrangements that the Administrator

may enter into with States and other cooperators in the control and eradication of disease such as FMD. However, APHIS continues to work with States and other cooperators in developing appropriate response plans and strategies that entail the cooperative efforts of APHIS, other Federal agencies, States, and animal industries in the event of an occurrence of FMD or other disease covered by the regulations. We recognize cooperative arrangements with States and other cooperators are a critical element in the control and eradication of diseases such as FMD, and therefore invite your comments on this subject.

We are also proposing other changes to the regulations that involve updating certain provisions that would be applicable to FMD.

The purpose of this proposed rule is to remove possible sources of delay in achieving FMD eradication, should an occurrence of that disease occur in this country. Under existing compensation regulations, delays may occur because of some producers' perceptions on receiving full payment, as well as because of current eradication program requirements. In the first instance, delays can derive from livestock owners' uncertainty of being fully compensated for the fair market value of destroyed animals, products, and materials, including livestock vaccinated as part of an FMD eradication program (official vaccines). Owners of affected herds may also be uncertain that they will receive full compensation for cleaning and disinfection costs. In the second instance, delays may be caused by having to rely on appraisal for the valuation of livestock when an insufficient number of appraisers or other constraints would prevent timely destruction of infected and exposed animals. This proposed rule sets forth regulatory changes to address these possible sources of delay.

**Proposed Changes to 9 CFR Part 53****Definitions**

We are proposing to add to current § 53.1 definitions for the terms *animals affected by disease*, *APHIS representative*, *breeding animal*, *commercial breeding animal*, *disease outbreak*, *donor animal*, *endangered or threatened species*, *exotic animal*, *Federal veterinarian*, *Livestock Marketing Information Center*, *market animal*, *National Veterinary Services Laboratories*, *official vaccine*, *rare animal*, *registered animal*, *seedstock herd or flock*, *State representative*, and *State veterinarian*.

The term *animals affected by disease* would refer to animals determined to be infected with, infested with, or exposed to, a disease covered by part 53. The term would also cover official vaccines. The regulations currently use the term “affected by or exposed to disease” in discussing the valuation and destruction of animals eligible for indemnification. In other animal health regulations promulgated by the Agency, the terms “affected with” or “affected by” apply to animals infected with a disease or exposed to a disease agent. Therefore, to avoid confusion, we propose to use the term “animals affected by disease” to cover both animals infected with a disease or exposed to a disease agent. The term “animals affected by disease” would also cover “infested with” because part 53 could apply to animals affected by screwworm, ticks, or organisms other than bacteria, viruses, or other agents typically associated with infection.

The regulations define *APHIS employee* as any individual employed by APHIS who is authorized by the Administrator to do any work or perform any duty in connection with the control and eradication of disease. The regulations define *inspector in charge* as an APHIS employee who is designated by the Administrator to take charge of work in connection with the control and eradication of diseases. We are proposing to remove references to the terms *APHIS employee* and *inspector in charge* throughout the regulations and replace them with the term *APHIS representative*. An *APHIS representative* would be defined as any individual employed by or acting as an agent on behalf of APHIS who is authorized by the Administrator to perform the services required by part 53. We would make this change since, depending on the location and magnitude of the disease occurrence, it may not always be possible to use APHIS employees for all the services authorized under the regulations. Therefore, to reflect the possibility that we may have to contract for some of the services covered by the regulations, we are proposing to use the term “APHIS representative” in place of “APHIS employee” and “inspector in charge” throughout the regulations.

We would define a *breeding animal* as any animal that is raised for the purpose of producing market animals or other breeding animals and that, in the case of a female, has donated embryos or been bred, and in the case of a male, is sexually intact and has reached the age of sexual maturity.

We would define the term *commercial breeding animal* to cover any breeding

animal other than a registered animal, an animal that is part of a seedstock herd or flock, or a donor animal.

The term *disease outbreak* would refer to the initial occurrence of the disease, as determined and reported by the United States Department of Agriculture.

A *donor animal* would be defined as any animal, other than a registered animal or an animal that is part of a seedstock herd or flock, that has donated at least two embryos, in the case of females, or at least 100 units of semen, in the case of males, for sale to another producer or transfer to a separate herd or flock.

The term *endangered or threatened species* would refer to those species defined as endangered species or threatened species in the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and the regulations promulgated thereunder and as they may be subsequently amended.

We would define an *exotic animal* as any animal that is native to a foreign country or of foreign origin or character or is not native to the United States.

We would define a *Federal veterinarian* as a veterinarian employed and authorized by the Federal Government to perform the services required by part 53. A Federal veterinarian could be an APHIS veterinarian or a veterinarian employed by another agency of the Federal Government.

The *Livestock Marketing Information Center* would refer to the organization funded cooperatively by the United States Department of Agriculture, State land grant universities, and livestock industry associations that develops, disseminates and maintains economic and market data relating to the livestock industry.

The term *market animal* would apply to any animal being raised for the primary purpose of slaughter for meat, or, in the case of dairy animals, the production of milk, or, in the case of certain sheep, the production of wool.

We would define *National Veterinary Services Laboratories* as the organizational unit within the Animal and Plant Health Inspection Service delegated responsibility for providing services for the diagnosis of domestic and foreign animal diseases, diagnostic support for disease control and eradication programs, import and export testing of animals, training, and laboratory certification for selected diseases.

We are proposing to define an *official vaccinee* as any animal that has been: Vaccinated with an official vaccine for FMD under the supervision of a State or

Federal veterinarian; identified by an eartag specifically approved by APHIS for identification of animals officially vaccinated for FMD; and reported to the Administrator as an *official vaccinee* for FMD promptly after vaccination by the State or Federal veterinarian supervising the vaccination. Because of our current focus on FMD, the term *official vaccinee* would only include those animals that have been officially vaccinated for FMD. In the future, we may propose to amend the regulations to include animals vaccinated for other diseases.

The term *rare animal* would mean an animal that is extremely uncommon in the United States and that is neither an exotic animal nor a member of an endangered or threatened species.

We would define a *registered animal* as an animal of a particular breed for which individual records of ancestry are maintained, and for which individual registration certificates are issued and recorded by a recognized breed association whose purpose is the improvement of the breed.

The term *seedstock herd or flock* would mean, in the case of cattle and sheep, a herd or flock in which, during the previous 5 years, at least 25 percent of the animals born to the herd or flock have, for breeding purposes, been sold to another producer or transferred to a separate herd or flock, or, in the case of swine, a herd in which at least 50 percent of the gilts produced have, for breeding purposes, been sold to another producer or transferred to a separate herd. This definition represents our best estimates based on our observations of the livestock industry. However, we recognize that a seedstock herd or flock is a concept that is evolving as a result of changes in technology and marketing, most notably in the swine industry. We therefore solicit your comments and suggestions on this definition, including alternative approaches for defining this term.

The term *State representative* would refer to an individual employed by a State or a political subdivision to perform the specified functions agreed to by the Department and the State, while *State veterinarian* would refer specifically to a veterinarian employed and authorized by a State or its political subdivision to perform the services required by part 53.

We would also amend definitions that already appear in current § 53.1 for the terms *Animal and Plant Health Inspection Service*, *disease*, *exotic Newcastle disease*, *highly pathogenic avian influenza*, *materials*, and *Secretary*.

We would make a minor change to the definition of *Animal and Plant Health Inspection Service* so that its recognized abbreviation, "APHIS," would appear as part of the term defined instead of in the text of the definition.

Current § 53.1 defines *disease* as FMD, rinderpest, contagious pleuropneumonia, exotic Newcastle disease, highly pathogenic avian influenza, and infectious salmon anemia, or any other communicable disease that in the opinion of the Secretary constitutes an emergency and threatens the livestock or poultry of the United States. We are proposing to amend the definition of this term to more closely follow the various statutory language for the control and eradication of diseases. We propose to define the term *disease* as any communicable disease of livestock or poultry for which indemnity is not provided elsewhere in 9 CFR chapter I, subchapter B, and contagious or infectious diseases of animals, such as FMD, rinderpest, contagious pleuropneumonia, exotic Newcastle disease, highly pathogenic avian influenza, and infectious salmon anemia, that, in the opinion of the Secretary, constitute an emergency or an extraordinary emergency and threaten the livestock or poultry of the United States. The revised definition would also clarify that diseases covered under part 53 would not include those diseases covered by indemnification regulations elsewhere in 9 CFR chapter I, subchapter B, such as tuberculosis, brucellosis, pseudorabies, and scrapie.

We would make a minor technical correction to the definition of *exotic Newcastle disease* as it currently appears in § 53.1 by not capitalizing the word "disease."

We are also proposing to make a technical correction, for purposes of clarification, to the definition of *highly pathogenic avian influenza*. We would add the words "in the test described in paragraph (1) of this definition" to immediately follow the words "one to five chickens" in the third paragraph of the definition.

The regulations currently define the term *materials* to include parts of barns or other structures, straw, hay, and other feed for animals, farm products or equipment, clothing, and articles stored in or adjacent to barns or other structures. The existing definition focuses primarily on articles or objects associated with farms. However, it is possible that locations other than farms, such as slaughtering facilities and other livestock concentration points, could be contaminated by or exposed to a disease agent. Therefore, we would broaden the

definition of materials to also include "any other article." We would change "farm products" to "agricultural products or byproducts" in order to include those products that may be produced somewhere other than on a farm. We would add references to "bedding" and "conveyances." We would also remove the words "parts of" that precede the words "barns or other structures" to make the provision easier to understand without changing its substantive meaning. Based on these proposed changes, we would define the term *materials* as barns or other structures; straw, hay, and other feed and bedding for animals; agricultural products and byproducts; conveyances; equipment; clothing; and any other article.

The term *Secretary* is defined in current § 53.1 as the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has been or may be delegated to act in the Secretary's stead. We would simplify this term to mean the Secretary of Agriculture of the United States or any officer or employee of the Department authorized to act for the Secretary.

We are also proposing to remove from current § 53.1 the definitions of *APHIS employee*, *inspector in charge*, *mortgage*, and *pet bird*. As discussed previously, we are proposing to use *APHIS representative* in place of *APHIS employee* and *inspector in charge* throughout the regulations, and, therefore, no longer require definitions of these terms. We do not believe a definition of *mortgage* is necessary because our use of the term in the regulations is in keeping with the dictionary meaning. The term *pet bird* is no longer used in the regulations. *Disease Control and Eradication, Payments Authorized, Determination of Disease*

Current § 53.2 provides that the Administrator is authorized to agree to cooperate with a State in the control and eradication of those diseases covered by the regulations. Current § 53.2 further provides that, upon agreement with the State, the Administrator is authorized to pay 50 percent of the expenses of the purchase, destruction, and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to such disease, except that for infectious salmon anemia the Administrator is authorized to pay 60 percent of those costs, and for exotic Newcastle disease or highly pathogenic avian influenza, the Administrator is authorized to pay up to 100 percent of those costs. Current § 53.2 also states that, if animals are

exposed to such disease prior to or during interstate movement and are not eligible to receive indemnity from any State, the Department may pay up to 100 percent of the costs of the purchase, destruction, and disposition of animals or materials required to be destroyed. Current § 53.2 further provides that any cooperative program for the purchase, destruction, and disposition of birds is limited to those birds that are "identified in documentation pursuant to Cooperative Agreements" as constituting a threat to the U.S. poultry industry. In addition, current § 53.2 provides that the Secretary of Agriculture may authorize other arrangements for the payment of expenses covered in this section upon finding that an extraordinary emergency exists.

We are proposing to make a number of changes to current § 53.2. Some of these are minor changes to make the regulations easier to understand. We are also proposing changes to § 53.2 that are more substantive in nature.

We would change the section heading "Determination of existence of disease; agreements with States" to "Disease control and eradication; payments authorized; determination of disease."

We are proposing this change so that the section heading better reflects the order of topics covered under § 53.2 and its scope of coverage. We would also delete some of the language from current paragraph (a) and reorganize a revised version of the remainder of current § 53.2(a) and (b) into a new paragraph (a).

We would clarify that the Department may cooperate not only with States, but also with political subdivisions of States, farmers' associations and similar organizations, and individuals in the control and eradication of disease. We would refer to these other potential cooperators to be consistent with the statutory language on this subject. In the absence of an extraordinary emergency, we would continue to provide that the Administrator would pay costs covered under § 53.2 upon agreement of the States or others to cooperate in the control and eradication of the disease. We would remove the specific language requiring that such agreement is subject to the State agreeing to enforce quarantine restrictions and directives properly issued in the control and eradication of disease, since there may be a number of activities relating to the control and eradication of disease that States and other cooperators would agree to perform in fulfilling their cooperative obligations. We would add that the payment of costs provided in proposed § 53.2 by the Administrator

would be subject to the availability of funding. Throughout proposed § 53.2, we would also make a stylistic change by substituting the word "costs" in place of "expenses."

In describing those costs eligible for indemnification under a cooperative program, current § 53.2(b) refers to "the expenses of purchase, destruction and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to such disease."

We would change this characterization by referring to animals "affected by disease." We would continue to use the term "contaminated by or exposed to" when referring to materials. However, we would make a technical change for purposes of clarification by referring to materials as contaminated by or exposed to "a disease agent."

The subject of sharing cleaning and disinfection costs is currently covered by § 53.7 of the regulations. We are proposing that this subject be covered in proposed § 53.2 so that § 53.2 would reference all costs for which payments are authorized.

We are proposing that, in the case of a cooperative program for FMD, the Administrator will pay 100 percent of the costs for:

- Purchase, destruction, and disposition of animals affected by FMD, including official vaccines; and
- Cleaning and disinfection of materials that are contaminated by or exposed to FMD, and the purchase, destruction, and disposition of such materials when the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable.

In the case of costs for cleaning and disinfection of materials because of FMD, we would require that such costs be "fair and reasonable" based on the plain meaning of that phrase. As discussed below, these types of costs would be verified based on receipts or other similar documentation submitted by the claimant. The concept of "fair and reasonable" would allow for compensation that takes into account that costs incurred for these items or services may vary from region to region.

We are proposing these indemnity changes in the case of FMD to provide the Administrator with sufficient resources and flexibility to effectively control and eradicate any occurrence of FMD in this country. An FMD occurrence in the United States could be devastating, given the Nation's extensive livestock holdings. We believe that effective disease control strategies at the first sign of an FMD occurrence

are imperative if losses are to be minimized. Authorizing the Administrator to pay 100 percent of the costs for the purchase, destruction, and disposition of animals affected by FMD, 100 percent of the costs for cleaning and disinfection of materials contaminated by or exposed to FMD, and 100 percent of the costs for the purchase, destruction, and disposition of such materials when the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable, would reassure livestock industries of the Department's full commitment to eradication, thereby helping to bolster the cooperation of affected parties.

We would also expressly provide compensation for official vaccines destroyed because of FMD. Vaccination of animals for FMD may be part of our cooperative control and eradication strategy should FMD be introduced into the United States. Specifically, susceptible animals at a certain distance from an occurrence may be vaccinated to help prevent the spread of the disease. Subject to certain exceptions that may include exotic or rare animals or endangered or threatened species, as discussed below in our proposed changes to § 53.4, vaccinated animals would be destroyed as part of an FMD eradication program.

Because nonvaccinated animals affected with FMD would be destroyed first, it may be necessary for vaccinated animals to be held on a premises for an indeterminate length of time prior to destruction. During this period, producers would be responsible for the care and feeding of their vaccinated animals. The regulations currently do not provide compensation for care and feeding of animals. However, we are seriously considering whether the regulations should authorize compensation to cover all or part of the costs of care and feeding of official vaccines awaiting destruction.

Compensating producers for the care and feeding of official vaccines would help remove any reluctance by producers to have their herds vaccinated as part of a cooperative program to control and eradicate FMD. Without providing such financial assistance, there could be a disincentive on the part of producers to cooperate and participate in the program since the costs of care and feeding would, in effect, offset the producers' compensation for these animals. Should paying for this activity be a responsibility of the producer or of the Federal Government through the payment of compensation? We would like your comments on this subject.

We would consider compensable costs relating to care and feeding to include those operating costs that are fair and reasonable and are directly attributable to maintaining the animals, such as costs for veterinary services and medicines, bedding and litter, fuel and electricity, repairs, allocated hired labor, and feed. Claims for such costs could be based on receipts or other documentation submitted to the Administrator that would verify a claimant's costs for care and feeding of official vaccines. Certain livestock and feed assistance programs administered by USDA's Farm Services Agency (FSA) provide that compensation for feed may also be calculated based upon rates that are tied to pre-established energy or nutrient maintenance requirements designed to meet the daily maintenance needs of different types and weight classes of livestock.

We solicit your comments that specifically address the appropriateness of, and need for, providing compensation to producers for costs relating to the care and feeding of official vaccines in the event of FMD. We further invite your comments on the types of costs that should be eligible for compensation, and the most suitable means for determining such costs (*i.e.*, through receipts or other documentation, pre-established animal energy or nutrient maintenance requirements, or some other means). We also solicit your comments on the amount of expenditures that might be incurred in the care and feeding of official vaccines over a particular time duration, such as one or two months.

We would also make a technical change to current § 53.2 with regard to cooperative programs for the purchase, destruction, and disposition of birds. We would provide that the birds covered under such a program would be "determined by the Administrator" as constituting a threat to the U.S. poultry industry instead of "identified in documentation pursuant to Cooperative Agreements" as constituting such a threat.

We are also proposing to remove from current § 53.2 the reference to the Secretary's authority to make other arrangements for the payment of expenses upon finding that an extraordinary emergency exists. The specific reference is not necessary because the proposed indemnity provisions for the destruction of animals and materials would apply both to cooperative compensation programs as well as in the case of an extraordinary emergency. The basis for the payments of compensation for animals or materials destroyed under a cooperative

program or in the case of an extraordinary emergency would be the fair market value. We would clarify in proposed § 53.2(a)(2) that when the Secretary determines that an extraordinary emergency exists, the Administrator would pay, subject to the availability of funding, 100 percent of the costs (i.e., the fair market value) for the purchase, destruction, and disposition of animals and materials. Payment of 100 percent of the costs for animals and materials in the case of an extraordinary emergency would apply to all diseases covered by the regulations. However, any payment by the Administrator could not exceed the difference between the compensation received from a State or other source and the fair market value of the animals or materials.

As discussed previously, current § 53.2(a) and (b), revised as described above, would become new § 53.2(a). We would then add a new paragraph (b) to § 53.2. Proposed § 53.2(b) would provide the basis for determining that animals are affected by disease or that materials are contaminated by or exposed to a disease agent. Under proposed § 53.2(b)(1), the determination that animals are affected by disease would be made by either a Federal veterinarian or a State veterinarian who has completed the APHIS course on foreign animal disease diagnosis. This particular course is currently offered at APHIS' Foreign Animal Disease Diagnostic Laboratory, located at Plum Island, NY.

The determination that animals are affected by disease would be based on factors such as clinical evidence of the disease (signs, necropsy lesions, and history of the occurrence of the disease), diagnostic tests for the disease based on protocols approved by the National Veterinary Services Laboratories, or epidemiological evidence. By epidemiological evidence, we mean evaluation of the clinical evidence and the degree of risk posed by the potential spread of the disease based on the disease's virulence, its known means of transmission, and the particular species involved. A copy of the protocols for diagnostic tests of diseases covered by part 53 would be available by writing Emergency Programs, Veterinary Services, Animal and Plant Health Inspection Service, USDA, 4700 River Road Unit 41, Riverdale, MD 20737-1231.

Under proposed § 53.2(b)(2), the APHIS representative or State representative, with the guidance of a Federal veterinarian or a State veterinarian, would be authorized to determine whether materials are

contaminated by or exposed to a disease agent.

*Payments for Animals and Materials, Other Compensation, Request for Review*

Current § 53.3 covers the appraisal of animals or materials eligible for indemnification. Paragraph (a) of current § 53.3 provides that animals affected by or exposed to disease, as well as materials required to be destroyed because of being contaminated by or exposed to disease, shall be appraised jointly by an APHIS employee and a State representative, or, if the State authorities approve, by an APHIS employee alone.

Paragraph (b) of current § 53.3 states that the appraisal of animals shall be based on the animal's fair market value according to its meat, egg production, dairy, or breeding value. Paragraph (b) also provides that animals may be appraised in groups, provided the animals are of the same species and type. Paragraph (b) states that when appraisal is "by the head," each animal in the group will be valued at that same value per head and when appraisal is "by the pound," each animal in the group will be valued at that same per-pound value.

Paragraph (c) of current § 53.3 provides that appraisals of animals shall be reported on forms furnished by APHIS that show the number of animals of each species and the value per head or the weight and value per pound. Paragraph (d) of current § 53.3 provides that appraisals of materials shall be reported on forms furnished by APHIS that show, when practicable, the number, size or quantity, unit price, and total value of each kind of material appraised.

We are proposing to make a number of changes to current § 53.3 both in terms of organization and content. We would change the section heading of current § 53.3 from "Appraisal of animals or materials" to "Payments for animals and materials; other compensation; request for review." We would make this change to be consistent with our proposal, as discussed below, of providing means other than appraisal for determining the value of animals and materials in the case of FMD.

Under proposed § 53.3, paragraph (a) would cover the valuation of animals, paragraph (b) would cover the valuation of materials, paragraph (c) would cover other compensation allowed by the regulations (i.e., costs for cleaning and disinfection), and paragraph (d) would cover the process for a claimant to request a review of the valuation of animals or materials, or the amount of

payment relating to costs of cleaning and disinfection.

Proposed § 53.3(a) would include much of the information that already appears in the regulations for the valuation of animals, but with certain important changes. Instead of referring to animals "affected by or exposed to disease," we would refer to animals "affected by disease" for the reasons discussed previously. Proposed § 53.3(a) would now also apply to the valuation of official vaccines in the case of FMD. Proposed § 53.3(a) would provide that the value of animals affected by disease and subject to destruction would be the fair market value based on appraisal of the animals, subject to an exception related to FMD as explained below. We would remove the reference that the fair market value be based on the "meat, egg production, dairy or breeding value of such animals" since fair market value may also reflect other factors as well.

We are proposing that, in the case of FMD, if the Administrator determines that appraisal is impracticable or would otherwise compromise efforts to effectively control and eradicate the disease, the Administrator may determine the fair market value of animals by a fixed-rate method in lieu of appraisal. We would make this change because the virulence and potential magnitude of FMD may make appraisal impracticable, and actually compromise our ability to control and eradicate the disease due to the time, personnel, and other resources that would be required to conduct appraisals. In addition, the weighing of animals subject to destruction would not likely be an option in the case of FMD because of time limitations and movement restrictions. The use of a fixed-rate method instead of appraisal would entail less contact with affected animals and fewer visits to affected premises by APHIS representatives and State representatives, thereby lowering the risk in the transmission of FMD. Having in place a mechanism for establishing fixed rates without the need for additional rulemaking at the time of an FMD occurrence would also facilitate quicker compensation to affected claimants, thus bolstering the cooperation of affected parties and contributing to the overall effectiveness of the eradication program.

Proposed § 53.3(a)(1) would contain the requirements for determining the fair market value of animals based on the appraisal method. We would continue to require that the appraisal be conducted jointly by an APHIS representative and a State representative, or, if the State authorities approve, by an APHIS

representative alone. We would also continue to provide that animals may be appraised in groups, provided that they are of the same species and type and provided that, where appraisal is by the head, each animal in the group would be the same value per head, or where appraisal is by the pound, each animal in the group would be the same value per pound.

Proposed § 53.3(a)(2) would set forth the basic criteria for determining the fair market value of animals under a fixed-rate method, if authorized by the Administrator in the case of FMD. Rates would be established on a per-head basis for beef and dairy cattle, swine, and sheep. This group of animals would likely represent the vast majority of animals that would be affected by FMD and subject to depopulation. Rates may be established for other animals for which the Administrator finds sufficient information publicly available to make a calculation of the animal's fair market value in accordance with the procedures provided in proposed § 53.3(a)(2). Otherwise, the value of other animals affected by disease would be determined by appraisal as provided in proposed § 53.3(a)(1). We invite your comments and suggestions on the fixed-rate method, including your comments and suggestions for setting fixed rates for animals susceptible to FMD other than beef and dairy cattle, swine, and sheep. We have not proposed fixed rates for goats at this time because we have not developed rate criteria that we believe suitably encompasses the different market and breeding classifications for goats. Similarly, we have not included the means for establishing fixed rates for nontraditional animals susceptible to FMD such as llamas, farmed cervids (deer and elk), and buffalo. We invite your comments and suggestions for establishing fixed rates for these animals.

In establishing fixed rates, we would set a uniform rate for each of the proposed animal classifications. We would do this, in part, because we would use price data that generally reflect national rather than regional conditions. We are also proposing a system of national uniform rates to facilitate implementation of an FMD eradication program. In proposing a system of national uniform rates, we realize there is a potential of overlooking regional market disparities. We invite your comments on the use of a national uniform fixed rate for each of the animal classifications, as well as your suggestions on alternative approaches to using national uniform fixed rates.

Proposed § 53.3(a)(2)(i) sets forth how we would classify animals for purposes of setting rates. Animals would first be classified as either market animals or breeding animals. Market animals would include those animals raised for the primary purpose of slaughter for meat or, in the case of dairy animals, the production of milk, or, in the case of certain sheep, the production of wool. Breeding animals would include those animals that are raised for the primary purpose of producing market animals or other breeding animals and that, in the case of females, have donated embryos or been bred, and in the case of males, are sexually intact and have reached the age of sexual maturity. For example, a registered dairy bull that is sexually immature would not be considered a breeding animal for purposes of compensation.

We would establish additional classifications for both market animals and breeding animals. For each classification, we would establish a single per-head rate to be paid to all animals within that classification. Market animals would be further classified according to their production phase, including whether or not the animals are weaned and whether or not the animals are on finishing rations (i.e., at a feedlot or finishing barn). We are proposing to establish rates for market animals for each of the following classifications:

- *Cattle.*

Beef cattle: Preweaned calves; non-feedlot, but weaned (stocker) animals; and feedlot animals.

Dairy cattle: Commercial dairy cows (female dairy cows that are or have been in milk), non-bred heifer replacements and sexually immature bulls, and bred heifer replacements.

- *Swine:* Grower-finisher pigs, nursery pigs, and preweaned piglets.

- *Sheep:* Preweaned lambs, weaned feeder lambs, slaughter lambs, and wethers raised for wool production.

Breeding animals would be further classified, based on whether they are commercial breeding animals, or are registered animals, part of a seedstock herd or flock, or donor animals. We would set up these classifications to recognize the generally higher value of registered or seedstock animals, as well as animals that have donated embryos or semen, in comparison to commercial breeding animals. We are proposing to establish rates for breeding animals for each of the following classifications:

- *Cattle.*

Beef cattle: Beef cows (commercial herds); bred replacement heifers (commercial herds); beef bulls (commercial herds); and registered

animals, animals in a seedstock herd, and donor animals.

Dairy cattle: Dairy bulls; and registered animals, animals in a seedstock herd, and donor animals.

- *Swine:* Sows and boars (commercial herds) and registered animals, animals in a seedstock herd, and donor animals.

- *Sheep:* Ewes and rams (commercial flocks) and registered animals, animals in a seedstock flock, and donor animals.

We have attempted to select commonly-used animal classifications with logical breakpoints that would be easily understandable to the livestock industry as well as to APHIS and State representatives. We are restricted in providing more extensive classifications based on an animal's weight since it is unlikely that we would be able to individually weigh animals in the event of an FMD occurrence. We believe, however, that use of these proposed classifications will allow claimants to receive fair market value for animals destroyed. We invite your comments regarding the above classifications for setting fixed rates, including your suggestions for alternative approaches to classifying animals for purposes of establishing rates.

Proposed § 53.3(a)(2)(ii) would provide the procedures for establishing fixed rates for different classifications of market animals. As discussed previously, we are proposing to define a market animal as any animal being raised for the primary purpose of slaughter for meat, or, in the case of dairy animals, the production of milk, or, in the case of certain sheep, the production of wool.

In proposed § 53.3(a)(2)(ii)(A), we provide that the rates for different classifications of beef cattle (preweaned calves; non-feedlot, but weaned (stocker) animals; and feedlot animals) would be based on prices from applicable futures contracts traded on the Chicago Mercantile Exchange. The rates for preweaned calves and stocker animals would be based on the feeder cattle futures contract, while the rate for feedlot animals would be based on the live cattle futures contract. The rates for each of these market animal classifications would be calculated by multiplying the applicable futures price by the estimated weight set by APHIS. It is necessary to multiply the futures price by an assigned compensation weight because futures prices are reported as a price per hundredweight (cwt) instead of a price per head. A hundredweight is a unit of weight equal to 100 pounds. We would use an estimated weight for each animal classification instead of the animal's actual weight since we do not expect it

to be practicable to individually weigh animals in the event of an FMD occurrence.

The advantage of basing rates on futures contract prices, when available, is that traditional livestock pricing is disappearing. Most buyers and sellers now participate in the futures markets. Therefore, futures prices would best represent national market conditions, as well as provide the most current price information. Further, there is a greater lag factor in obtaining similar price data from other publicly-available sources. When using futures contracts, we would select contracts that most closely parallel the production phase of the animal classification for which we are establishing rates. We invite your comments as to the appropriateness of using futures prices for determining fixed rates, and specifically futures contracts traded on the Chicago Mercantile Exchange.

Proposed § 53.3(a)(2)(ii)(A)(1) provides that, in using futures prices as a basis for establishing rates for beef cattle, we would take the simple average of the most recently available daily futures prices over a 3-month period immediately prior to the date of the disease outbreak using the futures contract month that corresponds to the month of the disease outbreak, or the next succeeding contract month if there is not an applicable futures contract for the month that corresponds to the month of the disease outbreak. In taking futures prices over a 3-month period, we would go back from the time of the disease outbreak. So if an outbreak was reported by USDA on August 15, we would go back 3-months in time from that date. In the case of preweaned calves, however, the applicable futures price would be the simple average of the most recently available daily future prices for that animal over a 3-month period using the futures contract month that corresponds to the month the claimant has historically weaned their calves, or the next succeeding contract month if there is not an applicable futures contract for the month that corresponds to the month of planned weaning. We would make this one exception in the case of preweaned calves since the estimated weight would be based on the average weaning weight for these animals.

Because markets and pricing mechanisms could be seriously disrupted as a result of FMD, establishing fixed rates based on market activity prior to the disease outbreak would likely be most appropriate. In our proposed standards for setting rates, we generally establish compensation rates based on price averages over a 3-month

time period going back from the time of the disease outbreak. By using a 3-month time period, we could take into account any possible anomalies, distortions, or other unique events that may have occurred in the marketplace in the weeks prior to the outbreak of FMD. We invite your comments on establishing rates based on a 3-month average of prices.

Under proposed § 53.3(a)(2)(ii)(A)(2), the estimated weight set for different classifications of beef cattle would be the average weight of animals in that production phase based on the most recently available information from USDA's National Agricultural Statistics Service (NASS) and National Animal Health Monitoring System (NAHMS). We would also use NASS and NAHMS information in determining the estimated weights for other animal classifications, as discussed below. Publicly-available data compiled by NASS and NAHMS on a national basis would provide a sufficient basis for determining representative estimated weights for different animal classifications. We invite your comments on using NASS and NAHMS data for this purpose, as well as your suggestions on the use of other information sources in establishing the estimated weights for different animal classifications.

Proposed § 53.3(a)(2)(ii)(A)(3) provides that, if the estimated weight for a particular classification of animal is outside the specified weight range of the animals covered by the selected futures contract, then an upward or downward adjustment in the average futures price would be made to reflect this weight difference and to account for the fact that the price per cwt varies with the total weight of the animal. The adjustment would be calculated by multiplying the price-weight adjustment factor, as determined by the Livestock Marketing Information Center, by the difference between the average weight of the animal covered by the futures contract and the estimated weight set by APHIS.

The formula for calculating the price-weight adjustment, sometimes referred to as a slide adjustment, is a common industry practice. Price-weight adjustment factors or "slide factors" are not published, but can be readily determined from a variety of livestock industry sources. We are proposing to use price-weight adjustment factors determined by the Livestock Marketing Information Center. The Livestock Marketing Information Center (LMIC) develops and produces materials for the livestock industry, including electronic market updates, newsletters, and other

economic information. The LMIC also maintains a comprehensive database on price, production, consumption, trade, and other livestock industry data. The LMIC is funded by State land grant universities, USDA, and livestock industry associations whose missions include supporting and conducting education and research. We invite your comments on the appropriateness of using price-weight adjustment factors, as well as using the LMIC as our source for obtaining this information. The application of price-weight adjustments in connection with the establishment of fixed rates is illustrated further in the example provided under the heading "Appendix—Establishing Fixed Rates."

Proposed § 53.3(a)(2)(ii)(B) would set forth the criteria for establishing rates for dairy cattle under the market animal classification. This would include commercial dairy cows, non-bred heifer replacements and sexually immature bulls, and bred heifer replacements. Bred heifer replacements would be classified as market animals on the assumption that they will become milk cows. However, if the bred heifer replacements are registered animals, or are part of a seedstock herd, or have donated at least two embryos that have been sold to another producer or transferred to a separate herd, their rate will be determined based on their classification as breeding animals.

There are no suitable futures contract prices for valuing dairy cattle. Therefore, we would look to other sources for price information. NASS reports quarterly prices received by producers for cows sold for milking purposes. We are proposing to use this price series as the basis for determining the value of dairy cattle. Rates for commercial dairy cows would be based on the most recent quarterly price per head reported by NASS. The rate for non-bred heifer replacements and sexually immature bulls would be 70 percent of the rate determined for commercial dairy cows. The lower rate for non-bred heifer replacements and sexually immature bulls would reflect the fact that these are younger animals with lower paid-in costs. The rate for bred heifer replacements would be 120 percent of the rate determined for commercial dairy cows. The higher rate for bred heifer replacements would reflect the value of their milk and breeding potential. We invite your comments for establishing rates for dairy cattle, including the proposed percentages that would be used in determining the rates for non-bred heifer replacements and sexually immature bulls, as well as for bred heifer replacements.

Proposed § 53.3(a)(2)(ii)(C) would set forth the standards for establishing rates for the different market animal classifications covering swine. These would include grower-finisher pigs, nursery pigs, and preweaned piglets. Proposed § 53.3(a)(2)(ii)(C)(1) would base the rate for grower-finisher pigs on the lean hogs futures contract that is traded on the Chicago Mercantile Exchange. The rate would be calculated by multiplying the applicable futures price by the estimated weight set by APHIS for grower-finisher pigs. The applicable futures price for grower-finisher pigs would be the simple average of the most recently available daily futures prices over a 3-month period immediately prior to the date of the disease outbreak using the futures contract month that corresponds to the month of the disease outbreak, or the next succeeding contract month if there is not an applicable futures contract for the month that corresponds to the month of the disease outbreak, and multiplying that simple average by 74 percent. We would multiply the average futures price by 74 percent because the lean hogs futures contract price is based on the slaughter (carcass) price and not on live animals. A hog carcass weighs approximately 74 percent of a live hog. The weight difference is due to dressing. The estimated weight set by APHIS would be the average weight of grower-finisher pigs based on the most recently available information from NASS and NAHMS.

In the case of nursery pigs, we do not believe that existing futures contract prices for hogs would provide a suitable means for valuing pigs in this early phase of production. Under proposed § 53.3(a)(2)(ii)(C)(2), we would instead use the national feeder pig (40 lb) price that is reported weekly by USDA's Agricultural Marketing Service (AMS). We believe that this AMS price series would provide a better measure of the fair market value for young pigs in this particular production phase. In establishing the rate for nursery pigs, we would take the simple average of the most recently available national feeder pig prices reported by AMS over a 3-month period immediately prior to the date of the disease outbreak. The AMS price is reported on a per-head basis, so it would not be necessary to estimate the weight for this classification of swine.

Similar to nursery pigs, we do not believe that the existing futures contracts would be a good means of a fair market value rate for preweaned piglets. Under proposed § 53.3(a)(2)(ii)(C)(3), we would use the national early weaned pig (10 lb) price

reported by AMS on a weekly basis. In establishing the rate for preweaned piglets, we would take the simple average of the most recently available prices reported by AMS over a 3-month period immediately prior to the date of the disease outbreak.

Proposed § 53.3(a)(2)(ii)(D) would set forth the standards for setting rates for the different market animal classifications for sheep. These would include preweaned lambs, weaned feeder lambs, slaughter lambs, and wethers raised for wool production. There are no suitable futures contracts to use to set rates for these different classifications of sheep. So we would instead use the national lamb carcass price that is reported by AMS on a weekly basis to establish them. Rates would be determined by multiplying the average AMS price by the estimated weight set by APHIS for that classification of animal. The average AMS price would be the simple average of the most recently available national lamb carcass prices reported by AMS over a 3-month period immediately prior to the date of the disease outbreak, multiplied by the AMS reported dressing percentage. We would multiply the average AMS price by the dressing percentage because this particular AMS price is a carcass price and not based on the live animal. If AMS does not report a dressing percentage, then 49.5 percent would be used. The dressing percentage, when reported, typically averages between 49 and 50 percent.

The estimated weight set by APHIS for preweaned lambs, weaned feeder lambs, and slaughter lambs would be the average weight of animals in that production phase based on the most recently available information from NASS and NAHMS. The estimated weight set by APHIS for wethers raised for wool production would be the same as that set by APHIS for slaughter lambs. In addition, for preweaned lambs and weaned feeder lambs, an upward or downward percentage adjustment in the average AMS price would be made to reflect the difference in weight between preweaned lambs or weaned feeder lambs and slaughter lambs. The price-weight adjustment would be supplied by LMIC. This price-weight adjustment will generally be positive, except during periods of high feed costs.

We invite your comments on our proposed standards for the establishment of rates for market animals, as just discussed, including your suggestions for alternative approaches for the valuation of market animals. The process for establishing rates for different classifications of market animals is also illustrated in the

example provided under the heading "Appendix—Establishing Fixed Rates."

Proposed § 53.3(a)(2)(iii) would contain the standards for establishing fixed rates for different classifications of breeding animals. As discussed previously, we are proposing to define a breeding animal as any animal that is raised for the purpose of producing market animals or other breeding animals and that, in the case of a female, has donated embryos or been bred, and in the case of a male, is sexually intact and has reached the age of sexual maturity.

Proposed § 53.3(a)(2)(iii)(A) would provide that the rates for breeding animals would be determined based on the rates of other market or breeding animals, and then adjusted to include any premium that reflects the animals' breeding value. For example, the rate for commercial sows or boars would be determined by taking the rate for a grower-finisher pig and then adding a percentage premium to reflect its breeding value. To mirror their higher value in the marketplace, breeding animals that are registered animals, are part of a seedstock herd, or have donated germ plasm that has been sold to another producer or transferred to a separate herd or flock, would receive a higher premium than commercial breeding animals. Proposed paragraphs (a)(2)(iii)(B) through (E) of § 53.3 would provide further information on establishing breeding animal rates for different classifications of beef and dairy cattle, swine, and sheep. The process for establishing rates for different classifications of breeding animals is also illustrated in the example provided under the heading "Appendix—Establishing Fixed Rates."

The valuation of breeding animals, including the assignment of certain premiums, is based on our best estimates from available data and our observations of the livestock marketplace. In establishing rates for breeding animals, we looked at price information from auction markets, breed associations, and similar sources, when available. We also conferred with agricultural economists and other livestock specialists within USDA. However, we recognize that publicly-available price information on breeding animals is not as extensive as that on market animals. We, therefore, solicit your comments and suggestions on this issue, including alternative approaches for the valuation of breeding animals.

We also realize that, particularly in the case of breeding animals, there is a greater potential for variations in value within the same category or classification of animals in comparison

to market animals. As discussed below under proposed § 53.3(d), claimants who disagree with the valuation of their animals would have the opportunity to submit a written request for review to the Administrator, explaining why the valuation of their animals should be different than the value determined under the fixed-rate method. The claimant would have the opportunity to submit any documentation on the animals' breeding value that would support a valuation different from the one determined through application of the fixed-rate method.

Proposed § 53.3(a)(2)(iii)(B) would contain the standards for setting rates for beef cattle that qualify as breeding animals. This includes beef cows (commercial herds); bred replacement heifers (commercial herds); beef bulls (commercial herds); and registered animals, animals in a seedstock herd, and donor animals.

The rate established for beef cows would be based on the same formula used to calculate the rate for beef cattle that are feedlot animals. A comparison of fed beef cattle prices and prices for bred young females and middle age cows (*Drovers' Journal*) found that bred cow prices were 83 percent of fed beef cattle prices. Though the premium for breeding purposes is not readily known, we note that by providing the same compensation rate (\$/cwt) for commercial breeding beef cows as is used for feedlot beef cattle would provide some measure of the value given for breeding purposes. In calculating the rate for beef cows, we would use the same average futures price (\$/cwt) as used for feedlot animals, and multiply the applicable futures price (\$/cwt) by the estimated weight set by APHIS for beef cows. The estimated weight set by APHIS would be the average weight of beef cows based on the most recently available information from NASS and NAHMS.

For bred replacement heifers within the beef cattle category, we propose establishing a rate that would be 120 percent of the rate established for beef cows. The higher rate for bred heifers in comparison to beef cows would reflect the value of their breeding potential. We are also proposing that the rate for beef bulls would be 250 percent of the rate established for beef cows. We invite your comments on the proposed percentage premiums for these animals.

Beef cows or bred replacement heifers that are breeding animals and are registered animals, part of a seedstock herd, or donor animals, would receive a rate equal to 250 percent of the rate established for commercial beef cows. Beef bulls that qualify as breeding

animals and are registered animals, part of a seedstock herd, or donor animals would receive a rate equal to 300 percent of the rate established for commercial beef cows. We invite your comments on the proposed percentage premiums for these animals. We are proposing higher rates for registered animals, animals that are part of a seedstock herd, and donor animals to reflect their higher value in the marketplace in comparison to commercial breeding animals. Our proposed procedures for establishing rates for other breeding animals would also follow this same policy.

Proposed § 53.3(a)(2)(iii)(C) would contain the standards for setting rates for dairy cattle that are breeding animals. We would have a rate classification for dairy breeding bulls. We are proposing that the rate for dairy bulls would be 250 percent of the rate established for commercial dairy cows. We would also have a separate rate classification for dairy cows and bred replacement heifers that are registered animals, part of a seedstock herd, or donor animals. The rate for these particular animals would be 250 percent of the rate established for commercial dairy cows. In the case of dairy breeding bulls that are also registered animals, part of a seedstock herd, or donor animals, we would set a rate that is 300 percent of the rate established for commercial dairy cows. We invite your comments on the proposed percentage premiums for these animals.

Proposed § 53.3(a)(2)(iii)(D) would contain the standards for establishing rates for swine that are considered breeding animals. We would have a rate classification for commercial sows and boars. We are proposing that the rate for commercial sows and boars would be 200 percent of the rate established for grower-finisher pigs. We would also have a second rate classification for breeding swine that are registered animals, part of a seedstock herd, or donor animals. Sows and boars in this second rate classification would receive a rate that would be 300 percent of the rate established for grower-finisher pigs. We invite your comments on the proposed percentage premiums for these animals.

We considered whether a separate rate classification should be established for swine breeding animals that are considered foundation stock or part of a grandparent or great-grandparent herd. While the number of animals that would qualify for this classification would be relatively small, such animals could merit a higher valuation in comparison to other seedstock animals. However, we could not determine a general rate

criteria to cover this situation. So owners that believe their swine breeding animals merit a higher valuation under these circumstance could submit a written request for review to the Administrator, as discussed in proposed § 53.3(d). We invite your comments on this issue, including your suggestions for alternative approaches for the valuation of swine breeding animals.

Proposed § 53.3(a)(2)(iii)(E) would provide the standards for establishing rates for sheep that qualify as breeding animals. This would include ewes and rams (commercial flocks), as well as registered animals, animals in a seedstock flock, and donor animals.

We are proposing that rates for commercial ewes and rams would be based on the same formula used to calculate the rate for slaughter lambs. The slaughter lamb price is greater than the cull ewe slaughter price or the cull ram slaughter price. By providing the higher lamb slaughter price for breeding ewes and rams and applying the breeding animal weight, we recognize a premium that these breeding animals might receive. We would take the average AMS price (\$/cwt) determined for slaughter lambs, as discussed previously in proposed § 53.3(a)(2)(ii)(D), and multiply that average price by the estimated weight set by APHIS for commercial ewes and rams. The estimated weight set by APHIS for commercial breeding ewes and rams would be the average weight of those animals based on the most recently available information from NASS and NAHMS.

Breeding ewes that are also registered animals, part of a seedstock flock, or donor animals, would receive a rate equal to 200 percent of the rate established for commercial breeding ewes. Similarly, breeding rams that are also registered animals, part of a seedstock flock, or donor animals, would receive a rate equal to 200 percent of the rate set for commercial breeding rams. We invite your comments on the proposed percentage premiums for these animals.

We realize that there may be unique situations where the valuation of animals by the fixed-rate method would be unsuitable. As provided in proposed § 53.3(a)(2)(iv), an owner of animals subject to valuation by the fixed-rate method may submit a written request to the Administrator asking that the animals affected by disease and subject to destruction be valued by appraisal instead of by fixed-rate method. The owner would have to include in the request the reasons why valuation by the fixed-rate method would be unsuitable. In determining whether to

grant the request, the Administrator would take into account whether providing the time and personnel to conduct an appraisal would compromise efforts to effectively control and eradicate the disease. The decision by the Administrator regarding the owner's request for appraisal would be final. A denial of a request for an appraisal under proposed § 53.3(a)(2)(iv) would not affect the owner's right to request a review of the actual valuation made, as discussed below under proposed § 53.3(d).

We invite your comments on our proposed standards for the establishment of rates for breeding animals, as just discussed. We also welcome your suggestions for alternative approaches for the valuation of breeding animals.

Proposed § 53.3(b) covers the requirements for the valuation of materials to be destroyed because of being contaminated by or exposed to a disease agent. The regulations currently do not address the valuation of materials except to require that the materials be appraised by an APHIS employee and a State representative, or, alternatively, by an APHIS employee alone, and that the information on the appraised value must be reported on forms furnished by APHIS showing, when practicable, the number, size, or quantity, unit price, and total value of each kind of material appraised.

In proposed § 53.3(b), we would clarify that the value of materials destroyed because of contamination by or exposure to a disease agent would be the material's fair market value based on an appraisal. The appraisal of materials would be conducted jointly by an APHIS representative and a State representative, or, if the State authorities approve, by an APHIS representative alone. However, in the case of FMD only, we are proposing that if the Administrator determines that appraisal would be impracticable, or would otherwise compromise efforts to effectively control and eradicate the disease, the Administrator may authorize the value of materials to be determined by other means, such as through records or other documentation maintained by the claimant indicating the value of the materials destroyed.

As in the case of animals, requiring the appraisal of contaminated materials prior to their destruction could prove to be impracticable, and actually compromise our ability to control and eradicate the occurrence of FMD. Contaminated materials subject to destruction would have to be disposed of promptly. Depending on the number of sites that would have to be visited by

appraisers, there may not be a sufficient number of trained personnel in the area to carry out these activities in a timely manner. In such cases, the Administrator would have to determine whether requiring appraisal would undermine efforts to control and eradicate the disease.

We would add a new paragraph, to appear at § 53.3(c), that would cover other compensation allowed by the regulations (i.e., costs for cleaning and disinfection). In proposed § 53.3(c)(1), we would provide that compensation for cleaning and disinfection costs would be based on receipts or other documentation maintained by the claimant that verify the expenditures made for cleaning and disinfection activities authorized under part 53. We are proposing that compensation be based on proof of expenditures. We realize, however, that there would be cases where claimants would wish to carry out any cleaning and disinfection activities on their own without hiring others to do the work. Our proposal does not currently provide a means for compensating such "sweat equity," but we invite your comments and suggestions that would address compensating cleaning and disinfection work performed directly by the claimant.

We are also proposing to add a new paragraph, to appear at § 53.3(d), that would cover a claimant's right to request a review. A claimant who disagrees with the valuation in total of all animals or all materials or the amount of other compensation determined under § 53.3 may submit a written request for review to the Administrator. We are proposing that the request for review take into account all animals or materials covered under the valuation since we want to consider the totality of circumstances. Particularly in the case of animals, the valuation may be based on the entire herd of a particular class of animals. For example, in applying a fixed rate to a herd of animals, some individual animals in the herd may be worth more than the average price paid per animal, others may be worth less. If a producer could challenge the per animal payment of only selected animals, the compensation claim could be more than the total value of the herd. Our goal is to make the producer whole, but not to exceed that. Thus, the claimant would have to include in the request the reasons, including any supporting documentation, that the total valuation of all animals or all materials or the amount of other compensation should be different from the valuation or amount determined by appraisal, fixed-

rate method, or other means provided for in proposed § 53.3. The decision by the Administrator regarding the valuation of animals or materials or the amount of other compensation would be final.

We would remove without replacement the information that appears in paragraphs (c) and (d) of current § 53.3 on the submission of claim forms seeking compensation for animals or materials destroyed. This subject would be covered under the section on presentation of claims, to appear at proposed § 53.7.

#### *Destruction of Animals*

Current § 53.4 covers the destruction of animals affected by or exposed to disease, as well as the manner of their disposition. Paragraph (a) of current § 53.4 provides that animals affected by or exposed to disease shall be killed promptly after appraisal and disposed of by burial or burning, unless otherwise specifically provided by the Administrator, at his or her discretion. Section 53.4, paragraph (a), also provides that in the case of animals depopulated due to infectious salmon anemia, salvageable fish may be sold for rendering, processing, or any other purpose approved by the Administrator. If fish retain salvage value, the proceeds gained from the sale of the fish will be subtracted from any indemnity payment from APHIS for which the producer is eligible under § 53.2(b).

We are proposing to make several changes to current § 53.4(a). First, we would amend the term "animals affected by or exposed to disease" to read "animals affected by disease" for purposes of consistency, as discussed previously. We would use the word "valuation" in place of "appraisal" since the valuation of animals in the case of FMD may not always be based on appraisal. The word "destroyed" would be used in place of "killed" to be consistent with similar references in other sections of the regulations. We would also clarify that the requirement that animals affected by disease be destroyed promptly following valuation would not apply to official vaccines. We would also strike the language that provides for the disposition of animals by means other than burial or burning if "specifically provided by the Administrator, at his or her discretion." We would instead provide that the animals would be "disposed of by burial, burning, or other manner approved by the Administrator as not contributing to the spread of the disease."

Paragraph (b) of current § 53.4 provides that the killing of animals and

the burial, burning, or other disposition of carcasses shall be supervised by an APHIS employee who shall prepare and transmit to the Administrator a report identifying the animals and showing their disposition. We would substitute "APHIS representative" for "APHIS employee" based on our previously-discussed proposal of using the term "APHIS representative" in place of "APHIS employee" throughout the regulations. Similarly, we would substitute the word "destroyed" for "killed" for purposes of consistency, as discussed above. We would also amend current § 53.4(b) to provide that the destruction and disposition of animals could also take place under the supervision of a State representative. This change would allow us greater flexibility in deploying personnel without compromising our ability to ensure that animal depopulation is carried out under qualified supervision. We would substitute the word "must" in place of "shall" in the phrase "shall be supervised" for stylistic reasons. Finally, we would make a minor change in sentence construction by amending the statement "who shall prepare and transmit to the Administrator a report identifying the animals and showing the disposition thereof" to instead state "who will prepare and transmit to the Administrator a report identifying the animals destroyed and the manner of their disposition."

Subject to certain exceptions that may include exotic or rare animals or endangered or threatened species, as discussed below, vaccinated animals would be destroyed as part of an FMD eradication program. However, nonvaccinated animals affected with FMD would be destroyed first. Thus, it may be necessary for vaccinated animals to be held on a premises for an indeterminate length of time prior to destruction. To clarify the different treatment that may be afforded official vaccines compared to other animals affected by disease, we would provide in proposed § 53.4(c) that official vaccines would be destroyed or otherwise handled in a manner as directed by the Administrator to prevent the dissemination of the disease. We would further add that official vaccines not subject to destruction may include, at the discretion of the Administrator, exotic animals, rare animals, or animals belonging to an endangered or threatened species. This policy of protecting from destruction certain exotic or rare animals, or animals belonging to an endangered or threatened species might arise, for

example, in the case of official vaccines housed in a zoo.

We would also provide in proposed § 53.4(c) that if official vaccines are allowed to move to a slaughtering or rendering facility in lieu of destruction or disposition by other means, then any proceeds gained from the sale of the animals to the slaughtering or rendering facility will be subtracted from any indemnity payment from APHIS for which the producer is eligible under proposed § 53.2(a)(2). Allowing animals to move to a slaughtering or rendering facility in lieu of destruction and disposition by other means would apply only to those animals officially vaccinated for FMD. Our policy for the control and eradication of disease calls for all other animals affected by disease to be destroyed and disposed of by burial, burning, other manner approved by the Administrator.

The information regarding salvageable fish being sold for rendering, processing, or other purpose, which now appears in § 53.4(a), would be moved without change to proposed § 53.4(d).

#### *Disinfection and Destruction of Materials*

Current § 53.5 provides for the disinfection or destruction of materials contaminated by or exposed to disease. Paragraph (a) of current § 53.5 states that such materials shall be disinfected and, if the cost of disinfection exceeds the value of the materials or disinfection would be impracticable, the materials shall be destroyed after appraisal as provided in § 53.3. Paragraph (b) of current § 53.5 provides that the disinfection or destruction of materials under § 53.5 shall take place under the supervision of an APHIS employee who shall prepare and transmit to the Administrator a certificate identifying all materials that are destroyed, showing the disposition thereof.

Current § 53.7 covers the disinfection of premises, conveyances, and materials, providing that all premises, including barns, corrals, stockyards and pens, and all cars, vessels, aircraft, and other conveyances, and the materials thereon, shall be cleaned and disinfected under the supervision of an APHIS employee whenever necessary for the control and eradication of disease. Expenses incurred in connection with such cleaning and disinfection shall be shared according to the agreement reached with the State.

The information contained in current §§ 53.5 and 53.7 overlap in certain respects. To eliminate this redundancy, we are proposing to include the information that appears in both these

sections under § 53.5 alone. In making these changes, we would refer to materials that have been "contaminated by or exposed to a disease agent" instead of materials that have been contaminated by or exposed to disease for purposes of consistency with similar proposed references elsewhere in part 53. We would substitute the term "value" for "appraisal" since the valuation of materials may not always be based on appraisal, as discussed previously in our proposed changes to § 53.3. We would also use "APHIS representative" in place of "APHIS employee" for the reasons discussed previously. We would also provide that the disinfection or destruction of materials could also take place under the supervision of a "State representative" to allow us greater flexibility in deploying personnel without compromising our ability to ensure that the disinfection or destruction of materials is carried out under qualified supervision. We would substitute the word "must" in place of "shall" in the phrase "shall be supervised" for stylistic reasons. We would use the word "report" in place of "certificate" in describing the document that the APHIS representative or State representative would submit to the Administrator listing all materials destroyed. We would also strike out the last sentence in current § 53.7 that provides that cleaning and disinfection expenses shall be shared according to the agreement reached under § 53.2. As explained earlier, this topic would be covered in proposed § 53.2.

As revised, proposed § 53.5 would provide that all materials that have been contaminated by or exposed to a disease agent would have to be cleaned and disinfected under the supervision of an APHIS representative or a State representative. However, if the cost of cleaning and disinfection of materials would exceed the materials' value or if the cleaning and disinfection of materials would be impracticable, the materials will be destroyed under the supervision of an APHIS representative or State representative, upon determination of their value as provided in proposed § 53.3. The APHIS representative or State representative would prepare and transmit to the Administrator a report identifying all materials destroyed and the manner of their disposition.

As part of these proposed changes to combine §§ 53.5 and 53.7, current § 53.7 would be removed in its entirety and current § 53.8 would be redesignated as § 53.7.

### Cleaning and Disinfection of Animals

Current § 53.6 provides that animals of species not susceptible to the disease for which a quarantine has been established, but which have been exposed to the disease, shall be disinfected when necessary by such methods as the Administrator shall prescribe from time to time. We would amend § 53.6 to instead provide that such animals must be cleaned and disinfected, as directed by, and under the supervision of, an APHIS representative or a State representative. We would insert a reference to the APHIS or State representative in place of the Administrator since the oversight of this activity would be performed by an APHIS or State representative. We would also make a change in the section heading and text by referring to this activity as "cleaning and disinfection" instead of "disinfection" to be consistent with other such references in the regulations.

The regulations currently do not provide for the compensation of costs relating to the cleaning and disinfection of nonsusceptible animals as is done for materials that are contaminated by or exposed to a disease agent. However, we are seriously considering whether these costs should be eligible for compensation in the case of FMD to further ensure the willingness of affected parties to take part in an FMD eradication campaign. Should paying for this activity be a responsibility of the producer or of the Federal Government through the payment of compensation?

Typically, the first mitigation strategy involving nonsusceptible animals is to restrict their movement from the affected area, farm, or other premises. However, another mitigation measure is to clean and disinfect such animals. This may simply entail applying a bleach or similar solution to the hooves or paws of the animals. We believe the cleaning and disinfection of nonsusceptible animals, when necessary, will be vital in the case of FMD, since nonsusceptible animals could spread FMD even though they themselves would not become infected. Therefore, we seek your comments on whether the regulations should authorize compensation for costs relating to the cleaning and disinfection of nonsusceptible animals to further ensure that all means of spreading the virus are eliminated. We also invite your comments on the types of costs and the amount of expenditures that might be incurred in the cleaning and disinfection of nonsusceptible animals.

We would consider nonsusceptible animals to include animals that are not

susceptible to the disease for which a quarantine has been established but that are capable of transmitting the disease agent as a mechanical vector if exposed to it. By "mechanical vector," we mean an animal or inanimate object that carries a microorganism with no replication occurring.

In addition to providing compensation for costs of cleaning and disinfection of nonsusceptible animals in the event of FMD, we are also considering whether the Administrator should be authorized to provide compensation for the destruction of nonsusceptible animals in the event the costs of cleaning and disinfection would exceed the animals' value, or, alternatively, if cleaning and disinfection of the animals would be impracticable. This situation could arise if both the nonsusceptible animals and the structure they are housed in have to be cleaned and disinfected as a result of their proximity to infected animals. In the case of certain nonsusceptible animals such as poultry, it may not be economically feasible to adequately clean and disinfect the poultry given their market value, or it may be otherwise impracticable to clean and disinfect the animals. Animals subject to destruction under such circumstances would be valued, for purposes of indemnification, in accordance with proposed § 53.3 and destroyed and disposed of in accordance with proposed § 53.4. We expect that this situation would arise only in limited situations. Under most circumstances, animal confinement during the disease occurrence, or cleaning and disinfection, or some combination of these measures, should obviate any need to destroy nonsusceptible animals exposed to FMD. However, we still seek your comments on whether the regulations should provide the Administrator with the authority to compensate the owners of nonsusceptible animals under this limited situation in the case of FMD.

### Presentation of Claims

Current § 53.8 provides that claims for compensation for the value of animals, the cost of burial, burning or other disposition of animals, the value of material destroyed, and the expenses of destruction, shall each be presented, through the inspector in charge, to APHIS on separate vouchers.

With the proposed removal of current § 53.7, current § 53.8 covering presentation of claims would become § 53.7. We are proposing to revise this provision without changing its substantive meaning by simply providing in new paragraph (a) that

claims for compensation under this part must each be presented by the claimant to an APHIS representative on forms approved by APHIS. The basis for seeking compensation in part 53 would be covered in proposed § 53.2. We would add that claims for animals or materials destroyed must be presented by the owner or the owner's designated representative. We would also add that the claimant shall provide any available supporting documents that will assist the Administrator, or that are requested by the Administrator, in verifying the quantity and value of animals or materials destroyed and the costs of their disposition, the costs of cleaning and disinfection, and any other costs incurred under this part for which compensation is sought. Examples of supporting documentation could include production records, purchase and sales records, breeding records, registration papers, and receipts.

We are also proposing to move the information on mortgages against animals or materials that is currently covered under § 53.9 to proposed § 53.7(b). Current § 53.9 provides that any claim for indemnity for animals or materials destroyed pursuant to the regulations shall be presented by the owner of the animals or materials on forms furnished by APHIS. The owner shall indicate on the forms whether or not the applicable animals or materials are subject to a mortgage. If the animals or materials are subject to a mortgage, then the owner and each person holding a mortgage on the applicable animals or materials shall sign the forms to indicate their consent to the payment of any indemnity to the person specified on the form.

We would make certain changes to the provision on mortgages that would appear in proposed § 53.7(b). We would substitute the phrase "on forms approved by APHIS" in place of "on forms furnished by APHIS" to allow for the possibility that someone other than APHIS may distribute the forms. We would also amend the second sentence which begins, "If the owner states there is a mortgage \* \* \*" to instead read "If there is a mortgage \* \* \*" to clarify that the applicability of this provision would be triggered by the existence of a mortgage, regardless of whether the owner asserts its existence. We would make several other modifications in sentence construction and eliminate the use of the words "thereby" and "thereon" to make the provision easier to understand. We are also proposing to remove, for reasons of redundancy, the word "allowed" that appears in the phrase "consenting to the payment of any indemnity allowed," as well as

change the phrase “pursuant to the requirements contained in this part” to read “pursuant to this part.” As amended, proposed § 53(b) would provide that when animals or materials have been destroyed pursuant to part 53, the owner of the animals or materials would have to certify on the claim for compensation whether or not the applicable animals or materials are subject to any mortgage. If there is a mortgage, the owner and each person holding a mortgage on the animals or materials would have to sign forms approved by APHIS indicating they consent to the payment of any indemnity to the person specified on the forms.

In covering mortgages against animals or materials in proposed § 53.7(b), we would remove current § 53.9 in its entirety from the regulations.

#### *Claims Not Allowed*

Current § 53.10 lists certain situations where claims for compensation will not be allowed. With the removal of current §§ 53.7 and 53.9, current § 53.10 would become § 53.8. We would also make certain other changes to this section.

Paragraph (a) of current § 53.10 provides that the Department will not allow claims arising under part 53 if the payee has not complied “with all quarantine requirements.” Under proposed § 53.8(a), we would elaborate on this requirement by providing that the payee must comply “with all Federal quarantine requirements or State quarantine requirements consistent with Federal law or regulations in effect for the control and eradication of disease.”

In current § 53.10(b), we provide that expenses for the care and feeding of animals held for destruction will not be paid by the Department unless the payment of such expenses is specifically authorized or approved by the Administrator. In proposed § 53.8(b), we would make a stylistic change by substituting the words “costs” and “cost” in place of “expenses” and “expense.”

Paragraph (c) of current § 53.10 states that we will not allow claims arising out of the destruction of animals or materials unless the animals or materials have been “appraised” as prescribed in the regulations and the owners have executed a written agreement to the appraisals. Since we are proposing that animals or materials could be valued by means other than appraisal in certain circumstances, we would instead provide that the Department will not allow claims arising out of the destruction of animals or materials unless the animals or

materials have been “valued” as prescribed in the regulations. Under proposed § 53.8(c), we would also not include the condition that owners must execute a written agreement to the appraisals. We do not believe such a provision is necessary since we are providing claimants the option of requesting a review by the Administrator if they believe the valuation of animals or materials is inadequate. (See previous discussion under “Payments for Animals and Materials, Other Compensation, Request for Review.”)

In current § 53.10(d), we provide that the Department will not allow claims arising out of the destruction of animals or materials which have been moved or handled by “the owner \* \* \* or its officer, employee, or agent acting within the scope of his or its office, employment or agency, in violation of a law or regulation administered by the Secretary for the prevention of the introduction into or the dissemination within the United States of any communicable disease of livestock or poultry for which the animal or material was destroyed, or in violation of a law or regulation for the enforcement of which the Secretary enters or has entered into a cooperative agreement for the control and eradication of such disease.”

Under proposed § 53.8(d), we would provide that the Department will not allow claims arising out of the destruction of animals or materials in violation of any “Federal law or regulation, or any State law or regulation consistent with a Federal law or regulation,” that is administered to prevent the introduction or dissemination of any “contagious or infectious animal disease or any communicable livestock or poultry disease” for which the animal or material was destroyed. A cooperative program for the control and eradication of disease may be carried out largely under State laws and regulations. By not allowing claims for violations of either Federal laws or regulations, or State laws or regulations that are consistent with Federal laws or regulations, we would encourage public compliance and thereby enhance the effectiveness of the cooperative program to control and eradicate disease. We would amend the reference to “communicable livestock or poultry disease” to state “any contagious or infectious animal disease or any communicable livestock or poultry disease” to be consistent with our earlier proposed change to the definition of disease. We would also delete the specific reference to not allowing claims on the basis of

“violation of any related cooperative agreement,” and just rely on the violation of the applicable law or regulation as the basis for not allowing a claim.

A key element in the successful eradication of a disease that spreads as quickly as FMD is the earliest possible detection and reporting of potentially diseased animals. A primary purpose for this rulemaking is to remove possible sources of delay so that any outbreak of FMD can be eradicated quickly. Prompt reporting could save the economy billions of dollars, as well as prevent significant disruptions to the economy. Prompt detection and reporting require knowledge and vigilance on the part of producers, industry, and State, local, and Federal governments, working cooperatively. Although the subject of reporting of animal diseases is not specifically addressed in this proposal, we invite public comment on ways to encourage timely reporting of potentially diseased animals, including, but not limited to, adjustments to compensation.

We would make certain other changes to proposed § 53.8(d) to make it easier to understand without changing its substantive meaning. We would remove the reference to an “officer, employee, or agent acting within the scope of his or her office, employment, or agency” and instead use the phrase “the owner’s representative acting on behalf of the owner.” We would also remove the word “thereof” and the phrase “within the United States,” as well as make several other minor changes in sentence construction and word usage to make the provision easier to understand.

#### *Miscellaneous*

The regulations, immediately below the table of contents and the authority citation, provide a cross reference that states, “For non-applicability of part 53 with respect to certain claims for indemnity, see § 51.10 of this chapter.” Section 51.10 appears in the regulations in 9 CFR part 51 for animals destroyed because of brucellosis. Section 51.10 provides that no claim for indemnity for animals destroyed under 9 CFR part 51 shall be paid under the regulations in part 53. The regulations covering animals destroyed because of tuberculosis in 9 CFR part 50 also contain a provision at § 50.15 that provides that no claim for indemnity for cattle or bison destroyed because of tuberculosis shall be paid pursuant to the regulations in part 53. We are proposing to amend the cross reference that appears below the table of contents and authority citation in part 53 by inserting a reference to § 50.15. We

would also make a technical correction to the authority citation immediately below the table of contents by adding a reference to 21 U.S.C. 134a–134h.

#### Executive Order 12866 and Regulatory Flexibility Act

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

We have prepared an economic analysis for this proposed rule. It provides a cost-benefit analysis as required by Executive Order 12866, as well as an initial regulatory flexibility analysis, which considers the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION**

**CONTACT.** Please refer to Docket No. 01–069–1 when requesting copies. The full analysis is also available on the Internet at <http://www.aphis.usda.gov/ppd/rad/fmdanalysis.pdf>. The economic analysis is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this document).

We do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the numbers and kinds of small entities that may incur benefits or costs from the implementation of this proposed rule.

In accordance with 21 U.S.C. 111, 114, 114a, and 134a–134h, the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction into the United States and the interstate dissemination within the United States of any communicable diseases of livestock and poultry, as well as any contagious or infectious diseases of animals that in the opinion of the Secretary constitute an emergency and threaten the livestock or poultry of the United States, and to pay claims growing out of the destruction of animals and materials. Animal health regulations promulgated by the Department under this authority include those regarding payment of claims in 9 CFR part 53.

#### Summary of the Cost-Benefit Analysis

Our analysis examines the potential economic effects of proposed changes affecting indemnification and other compensation paid for losses due to the occurrence of FMD in the United States. Recent occurrences of FMD in a number of formerly FMD-free regions have demonstrated both the speed with which an FMD outbreak can spread and the magnitude of its consequences.

An FMD occurrence in the United States could be devastating, given the Nation's extensive livestock holdings. Besides the direct economic effects on ruminant and swine producers, consequences of the disease would ripple through the economy, causing indirect costs in sectors beyond agriculture. International movement of many commodities would be disrupted by restrictions imposed by trading partners. Costs of an FMD occurrence to the Nation's economy could reach to billions of dollars, if not quickly controlled. The Department is engaged in a number of planning and operational activities expected to reduce the likelihood of an FMD occurrence and, if FMD is introduced, to prevent impacts from reaching catastrophic levels. Nonetheless, the risk of an FMD introduction into the United States is ever present, given today's highly mobile environment and global agricultural economy.

The regulations currently provide that upon agreement of the State, the Administrator is authorized to pay 50 percent (and in the case of infectious salmon anemia up to 60 percent, and in the case of exotic Newcastle disease or highly avian influenza up to 100 percent) of the expenses of the purchase, destruction, and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to disease. The Administrator is also authorized to pay up to 100 percent of the purchase, destruction, and disposition of animals exposed to such disease prior to or during interstate movement that are not eligible to receive indemnity from any State. The Secretary of Agriculture may authorize other arrangements in the case of an extraordinary emergency.

Under the current regulations, animals and materials subject to destruction are valued based on an appraisal. The regulations currently do not expressly provide for compensation for official vaccines. In addition to compensation for destroyed property, the Administrator is authorized to indemnify for cleaning and disinfection costs in accordance with the cost sharing agreement with the State.

A rapid, coordinated response by the public and private sectors in the early stages of an FMD occurrence is imperative, if devastating losses are to be prevented. The purpose of this proposed rule is to remove possible sources of delay in achieving FMD eradication. Under the existing regulations, delays may occur because of certain producers' perceptions, as well as eradication program requirements. In the first instance, delays can derive from livestock owners' uncertainty of being fully compensated for the fair market value of destroyed animals, products, and materials, including livestock vaccinated as part of an eradication program (official vaccines). Owners of affected herds may also be uncertain that they will receive full compensation for cleaning and disinfection costs. In the second instance, delays may be caused by having to rely on appraisal for the valuation of livestock when an insufficient number of appraisers or other constraints would prevent timely destruction of infected and exposed animals.

The proposed rule sets forth regulatory changes to address these possible sources of delay in the event of an outbreak of FMD. First, the Department would pay 100 percent of the costs for the purchase, destruction, and disposition of animals affected by FMD, including official vaccines. The Department would also pay 100 percent of the costs for cleaning and disinfection of materials that are contaminated by or exposed to FMD. If the costs of cleaning and disinfection exceed the value of the materials, or cleaning and disinfection would be impracticable, then the Department would pay 100 percent of the purchase, destruction, and disposition of such materials. These changes are intended to allay any concerns on the part of affected entities that States would be unable to fund their shares of compensation payments.

Second, livestock valuation based on a set of fixed rates would be made available as an alternative to appraisal. Fixed compensation rates would potentially enable FMD-affected herds to be compensated more quickly with less risk of disease spread.

A third change would provide that in the case of FMD only, if an appraisal of materials to be destroyed is found to be impracticable, or would otherwise compromise efforts to effectively control and eradicate the disease, the Department may authorize the material's fair market value to be determined by other means, such as through records or other documentation maintained by the claimant indicating

the value of the materials destroyed. This option could eliminate another potential source of delay in determining the value of materials subject to destruction.

The Department would respond to an FMD occurrence by entering into a cooperative control and eradication program with States or others, or alternatively, in the case of an extraordinary emergency, take action upon determination that the State is not taking adequate measures in regard to the control and eradication of disease. In the full analysis, we use a cooperative program under the auspices of the current regulations and an extraordinary emergency determination as baselines for measuring the effects of the proposed rule, if implemented.

The regulations currently authorize the Department to pay 50 percent of the cost of purchase, destruction, and disposition of animals and materials required to be destroyed under a cooperative program for most diseases, including FMD. Affected States would be expected to fund the remaining 50 percent of compensation. Compensation for costs of cleaning and disinfection of products or materials that have been contaminated by or exposed to FMD would be shared by the Department and State, in accordance with the agreement reached by the two parties. The regulations currently do not expressly provide for owners of official vaccines to be compensated for their destruction. In the case of an FMD emergency, a rule would probably be quickly promulgated that would allow compensation for official vaccines.

In the case of an extraordinary emergency, the Department would be authorized to seize, quarantine, and dispose of any affected or exposed animals, carcasses, products, or articles. Under an extraordinary emergency, the Department is statutorily required to pay compensation for any animal or material destroyed based on its fair market value, and such compensation cannot exceed the difference between any compensation received from a State or other source and such fair market value. The Department's compensation responsibilities and costs and eradication program costs in general are likely to be larger in the case of an extraordinary emergency than they would be under a cooperative program, and States' responsibilities and costs will be correspondingly smaller.

Comparing the proposed rule to the existing regulations in the context of a cooperative program, the major impacts for the Department would be a significantly larger budgetary obligation and an eradication program less subject

to possible sources of delay. Assumption of States' 50 percent share of compensation payments under the proposed rule would reduce livestock owners' uncertainty about being fully compensated for losses. Less uncertainty is expected to lead to improved levels of participation and cooperation in the eradication effort. Provision of fixed rates as an alternative to appraisal for valuing compensated livestock will also remove possible eradication delays. Other potential benefits of using fixed rates will be a reduced risk of mechanical transmission of FMD, and lower operational costs.

For States, the budgetary impact of the proposed rule in the case of an extraordinary emergency will be just the opposite. Department funding of all compensation payments will provide significant financial savings to States in the event of an FMD occurrence. However, States may still face numerous direct and indirect FMD costs and some share of eradication program costs in the event of a serious FMD outbreak.

For affected industries and livestock owners, the main impact of the proposed rule as applied in a cooperative program will be increased confidence that affected parties will receive full fair market value when compensated for destroyed animals and materials. This reassurance will encourage the private sector's participation and cooperation in the eradication program. In the end, fewer livestock operations may be directly affected because the higher level of cooperation will lessen the possibility of eradication program delays. In addition, the more quickly eradication is accomplished, the smaller will be industry losses due to quarantines and international trade restrictions.

Affected entities will still bear uncompensated costs, from lost income because of downtime, to restocking difficulties and market restrictions. Trade losses and other industry-wide impacts will also still occur.

In comparing the proposed rule versus the current regulations in the case of an extraordinary emergency, the total amount of compensation paid by the Department would be much the same in both cases.

While affected industries and livestock owners would be fully compensated by the Department for destroyed livestock and materials both in an extraordinary emergency and under the proposed rule, they would still face uncompensated costs such as lost income and fixed costs.

Compensation costs incurred by the Department in the event of an FMD occurrence would depend on the

characteristics of the outbreak and mitigation strategy. Two hypothetical examples of FMD occurrences and resulting livestock compensation are presented, to demonstrate the main compensation funding impacts of the proposed rule for the Department and affected States, in comparison to cooperative conditions. (A comparison of compensation funding with the proposed rule to funding under extraordinary emergency conditions is pointless, since the Department would pay 100 percent of compensation in both instances.)

The first example assumes a 7 percent loss of U.S. livestock, which was the percentage of the United Kingdom's livestock destroyed in 2001 because of FMD. After adjusting for differences in the relative percentages of cattle, swine, and sheep in the United States compared to those in the United Kingdom, and applying a set of fixed rates calculated using procedures set forth in the analysis, payments for destroyed animals were found to total \$7.3 billion. Related analyses, given assumed numbers of FMD-affected premises, yield compensation payments for cleaning and disinfection of premises that total \$279 million.

Under this first example, and based on the compensation provisions in the current regulations, we estimate the Department and affected States would each bear compensation payments of about \$3.8 billion in a cooperative program. Under the proposed rule, the Department's compensation payments would increase to about \$7.6 billion. The impact would be for Department compensation payments to increase by \$3.8 billion (the States' 50 percent share of compensation for destroyed animals and cleaning and disinfection costs). Most likely, total Department compensation payments would be some lesser amount if eradication delays that would otherwise occur (because of producers' uncertainties about State funding or reliance solely on appraisal for the valuation of livestock and materials) were avoided. While affected States would not be obliged to pay compensation, they would still bear other costs of the disease and its eradication.

The second hypothetical example assumes a smaller FMD occurrence, and shows the same pattern of compensation payments with and without the proposed rule. Without the rule, the Department and affected States would each pay about \$216 million, that is, one-half of compensation for destroyed animals and cleaning and disinfection costs. Under the proposed rule, the Department's compensation in a

cooperative program with States and other cooperators would increase to \$432 million, that is, 100 percent of compensation. The overall impact would be for the Department's compensation burden to increase by \$216 million (the States' 50 percent share of compensation for destroyed animals and cleaning and disinfection costs). Again, these costs may be overstated, since there could be savings through the avoidance of eradication delays. Also, States would not pay compensation under the proposed rule, but would face other costs relating to the control and eradication of disease.

The two examples illustrate the proposed rule's shift in compensation payments from affected States to the Department in the case of a cooperative program. However, as noted above, States and the private sector would face other costs including a portion of FMD eradication program costs, income losses and fixed costs for livestock and related industries, and economy-wide indirect impacts. Because these other costs remain uncompensated under the proposed rule, States and livestock owners will still have strong incentives to remain vigilant for the first signs of disease, and to cooperate fully with the Department if there is an FMD occurrence.

FMD eradication and compensation costs will depend on the scale of the occurrence of the disease, which in turn will depend on how quickly and effectively the Department, States, and private entities can respond. States and the private sector will be positively affected by eradication efforts less prone to delay: Fewer livestock and wildlife populations will be directly affected, producers and exporters will be able to reestablish their operations sooner, and business losses for input suppliers, transporters, and other indirectly affected businesses will be smaller. Conversely, a protracted eradication effort will mean heightened losses and larger eradication costs.

The benefits of this proposed rule are several. Payment of 100 percent compensation for animals and materials destroyed in the event of FMD, as well as related cleaning and disinfection costs, should eliminate uncertainty on the part of livestock owners about States' ability to fund their share of FMD compensation. It should encourage fully committed participation by affected parties. Otherwise, such uncertainty could cause delays in an FMD eradication campaign.

The option of using fixed rates in place of appraisal in valuing livestock should also remove possible eradication delays in those situations where

appraisal is impracticable or would otherwise compromise eradication efforts. The use of fixed rates should result in program savings, since their application would require fewer resources than appraisal. Fixed rates should also lower risks of mechanical disease transmission, since there would be less human contact with infected animals.

In sum, the changes in this proposed rule would strengthen programs for the control and eradication of FMD by broadening the Department's options. The changes would be particularly important in lessening the chances that FMD's eradication will be delayed.

As alternatives to the proposed rule, the current regulations as applied to cooperative programs and extraordinary emergencies have shortcomings. The current regulations under a cooperative program contain possible sources of eradication program delay.

Under an extraordinary emergency, USDA compensation for animals and materials destroyed would be the same under the current regulations and proposed rule. However, under the current regulations appraisal would be the only method of valuation, and costs to USDA of conducting an FMD eradication campaign would be higher (and costs to States correspondingly lower). Policy changes would need to be planned and implemented immediately.

#### *Summary of Initial Regulatory Flexibility Analysis*

Agencies are required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to evaluate the potential economic effects of proposed rules on small entities. We do not have enough information to fully evaluate the potential effect of this proposed rule on small entities. As such, we are inviting comments addressing this issue. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from implementation of this proposed rule, and if there are any special issues relating to the business practices of these small entities that would make them particularly different from larger firms in their ability to comply with this proposed rule. However, we have made some initial conclusions.

The changes in this proposed rule would directly affect ruminant or swine operations whose herds or flocks are affected by FMD. Other businesses that sell or deal with animal products and byproducts could also be affected by the proposed rule if their commodities were destroyed as part of an eradication program. For purposes of illustration,

our analysis focuses on an occurrence of FMD. Therefore, entities directly affected by the proposed rule in the case of an FMD occurrence would be ruminant and swine operations whose herds or flocks are affected by the disease, as well as other businesses that sell or deal with susceptible animal products and byproducts that would have to be destroyed as part of an eradication program. Our analysis focuses on livestock producers, while recognizing that similar economic effects could be expected for other types of establishments eligible for compensation.

The Small Business Administration (SBA) has established guidelines for determining which types of firms are to be considered small under the Regulatory Flexibility Act. An establishment engaged in dairy animal and milk production, cattle ranching and farming, hog and pig farming, sheep farming, or goat farming is considered small if it has annual sales of less than \$750,000. In 1997, at least 92 percent (79,155 of 86,022) of dairy farms, 99 percent (651,542 of 656,181) of cattle farms, 87 percent (40,185 of 46,353) of hog and pig farms, and 99 percent (29,790 of 29,938) of sheep and goat farms were considered small.

Cattle feedlots are considered small if their annual sales are \$1.5 million or less. Over 97 percent of feedlots (95,000 of 97,091) have capacities of less than 1,000 head, and average annual sales of about 420 head. Assuming each head sold for \$1,000, these less-than-1,000 head capacity feedlots would generate, on average, \$420,000 in sales. Clearly, most feedlots and other livestock operations are small entities.

Benefits for small entities will be the same as those described in the cost benefit analysis, which are that small entities essentially will have greater confidence that they will receive full fair market value when compensated for destroyed animals and materials. This reassurance will encourage small entities to participate fully in FMD's eradication. In the end, fewer small entities will be directly affected because the higher levels of cooperation will reduce the delays in eradicating FMD.

Small entities that own livestock selected for vaccination as part of the eradication process will also be more willing to cooperate, with the knowledge that they will be compensated for the fair market value of their animals. They will be encouraged to feed and care for the official vaccinates humanely, confident that these expenses will be compensated as well.

Full compensation by the Department for cleaning and disinfection of affected products and materials, will likewise enhance small entities' willingness to take part in an FMD eradication campaign.

Even with the changes in the proposed rule are implemented, affected small entities will still bear uncompensated costs, from lost income because of downtime, to high restocking prices and market restrictions. If FMD does occur, small entities can be expected to benefit directly and indirectly from the elimination of possible sources of eradication delay.

In sum, the vast majority of livestock operations are small entities. While the course an occurrence of FMD would take cannot be predicted, it is reasonable to expect that small entities would be among the beneficiaries of the proposed rule directly as compensated parties and indirectly through rule changes that would lessen the chances that FMD's eradication will be delayed.

This proposed rule would entail information collection requirements. These requirements are described in this document under the heading "Paperwork Reduction Act."

#### Executive Order 12372

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

#### Executive Order 12988

This 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 would require the submission of claims for compensation in the event of a future occurrence of FMD. In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments

refer to Docket No. 01-069-1. Please send a copy of your comments to: (1) Docket No. 01-069-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Providing affected herd owners and other claimants with appropriate compensation would entail the use of VS Form 1-23, also known as an Appraisal and & Indemnity Claim Form. Affected herd owners and other claimants would also be expected to provide any supporting documentation that will assist the Administrator, or that is requested by the Administrator, to verify the quantity and value of animals or materials destroyed and the costs of their disposition, and the costs of cleaning and disinfection. We are therefore asking OMB to approve, for 3 years, our use of this information collection.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

**Note:** Our estimate below shows a minimal burden of 1 hour total because we believe an FMD outbreak is unlikely. Therefore, we currently are not collecting information and do not plan to collect information unless an outbreak does occur. In the event of an FMD outbreak, we will revise the estimated number of respondents and estimated burden accordingly at that time based on the number of expected respondents.

*Estimate of burden:* Public reporting burden for this collection of information

is estimated to average 1.0 hour per response.

**Respondents:** Owners of animals and materials destroyed, other claimants incurring costs under this part for which compensation is sought, as well as program support personnel including accredited veterinarians, State animal health employees, and local authorities who would be providing assistance in the event of a national animal disease emergency.

*Estimated annual number of respondents:* 1.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 1.

*Estimated total annual burden on respondents:* 1 hour.

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

#### Appendix—Establishing Fixed Rates

To illustrate how we would establish rates for certain animal species under a fixed-rate method, as discussed previously in our proposed changes to § 53.3, we have provided an example based on a hypothetical outbreak of FMD in early April of 2001. In this example, we would establish fixed rates for cattle (beef and dairy animals), swine, and sheep. This group of animals would represent the vast majority of animals that would be affected by FMD.

Representative "slide factors" for calculating the price-weight adjustment for different animal categories throughout this example were based on information provided by the LMIC.

The valuation of breeding animals, including the assignment of certain premiums, is based on our best estimates from available data and our observations of the livestock market. We realize that particularly in the case of breeding animals, there is a greater potential for variations in value within the same category or classification of animals in comparison to market animals. However, as discussed previously, owners would have the right to request an appraisal of their animals if they believed the fixed-rate method would be unsuitable in their particular situation. In addition, claimants who disagree with the valuation of their animals under the fixed-rate method would have the opportunity to submit a written request for review to the Administrator, explaining why the valuation of their animals should be different than the value determined by using fixed rates.

In terms of organization, we first provide a summary of the fixed rates

that would be paid in this example based on a hypothetical outbreak of FMD in early April of 2001. We then

provide a more expanded discussion of how these rates would be determined.

The summary of rates that would be paid for beef and dairy cattle, swine,

and sheep are as follows. Estimated weights used to calculate the payment per head are noted in parenthesis where applicable.

	Payment per head
<b>Market animals:</b>	
<b>Beef Cattle:</b>	
Preweaned calves (500 lb) .....	\$496.25
Non-feedlot, but weaned (stocker) animals (650 lb) .....	601.51
Feedlot animals (1,100 lb) .....	814.11
<b>Dairy Cattle:</b>	
Commercial dairy cows (female dairy cows that are/have been in milk) .....	1,320.00
Non-bred heifer replacements and sexually immature bulls .....	924.00
Bred heifer replacements .....	1,584.00
<b>Swine:</b>	
Grower-finisher pigs (200 lb) .....	98.04
Nursery pigs .....	51.70
Preweaned piglets .....	32.72
<b>Sheep:</b>	
Slaughter lambs and wethers raised for wool production (130 lb) .....	99.76
Preweaned lambs (70 lb) .....	57.48
Weaned feeder lambs (85 lb) .....	69.13
<b>Breeding animals:</b>	
<b>Beef Cattle:</b>	
Beef cows (commercial herds) (1,000 lb) .....	740.10
Bred replacement heifers (commercial herds) .....	888.12
Beef bulls (commercial herds) .....	1,850.25
Registered animals, animals in a seedstock herd, and donor animals:	
Cows and bred replacement heifers .....	1,850.25
Bulls .....	2,220.30
<b>Dairy Cattle:</b>	
Dairy bulls .....	3,300.00
Registered animals, animals in a seedstock herd, and donor animals:	
Cows and bred replacement heifers .....	3,300.00
Dairy bulls .....	3,960.00
<b>Swine:</b>	
Sows and boars (commercial herds) .....	196.08
Registered animals, animals in a seedstock herd, and donor animals .....	294.12
<b>Sheep:</b>	
Commercial ewes (160 lb) .....	122.78
Commercial rams (200 lb) .....	153.48
Registered animals, animals in a seedstock flock, and donor animals:	
Ewes .....	245.56
Rams .....	306.96

A more expanded discussion of how these rates were determined for each of the animal categories follows:

### Market Animals

#### Beef Cattle

##### Preweaned Calves

*Estimated weight:* 500 lb.

*Average futures price (adjusted):*

99.25 per cwt.

*Compensation rate:* \$496.25 per head.

We determined the compensation rate for preweaned calves by taking the simple average of the most recently available daily futures prices over a 3-month period immediately prior to the date of the disease outbreak, and multiplying it by the estimated weight. For preweaned calves, we looked to the feeder cattle futures contract traded on the Chicago Mercantile Exchange, using the contract month that corresponded to the month of planned weaning. We used

the planned weaning month instead of the month of the FMD outbreak since the estimated weight would be based on the average weaning weight for these animals.

We determined that the estimated weight for preweaned calves was 500 lb, which is the average weaning weight according to data from NAHMS. Since the estimated weight for preweaned calves was less than the specified weight range of the feeder cattle futures contract (700–849 lb), we adjusted the average futures price upwards. We calculated the price-weight adjustment by taking the slide factor determined by LMIC (in this case \$4/cwt), and multiplying this factor by the difference between the futures contract weight and the estimated weight (775 lb – 500 lb = 275 lb).

Assuming an early April 2001 disease outbreak and a weaning month of

October, the average futures price was \$88.25 per cwt. It is important to note that per/cwt prices are generally higher for smaller animals than for larger animals. We then adjusted the average futures price upwards based on a price-weight adjustment of \$11 per cwt. We calculated the \$11 per-cwt adjustment by selecting a slide factor of \$4 per cwt and multiplying it by 275 lb. So the average futures price for determining the compensation rate for preweaned calves was adjusted upward to \$99.25 per cwt (\$88.25/cwt + \$11/cwt). We then determined the compensation rate of \$496.25 per head by multiplying the adjusted average futures price of \$99.25 per cwt by the estimated weight of 500 lb (\$99.25/cwt × 5.0 cwt = \$496.25 per head).

*Non-Feedlot, but Weaned (Stocker) Animals*

*Estimated weight:* 650 lb.

*Average futures price (adjusted):* \$92.54 per cwt.

*Compensation rate:* \$601.51 per head.

We determined the compensation rate for stocker animals by taking the simple average of the most recently available daily futures prices over a 3-month period immediately prior to the date of the outbreak for the feeder cattle contract traded on the Chicago Mercantile Exchange, and by then multiplying the simple average by the estimated weight for stocker animals. In taking a 3-month average, we used the contract month that corresponded to the month of the FMD outbreak. Based on an early April 2001 outbreak, the average futures price was \$87.54 per cwt.

We set an estimated weight of 650 lb for stocker animals based on the following set of assumptions. The average feedlot placement weight of stocker animals was 700 lb according to NASS statistics. Since calves are weaned at 500 lb, this meant a 200 lb non-feedlot gain for stocker cattle. We took into account a set portion of this non-feedlot weight gain by adding 150 lb to the weaned weight of 500 lb to arrive at the estimated total weight of 650 lb for stocker animals.

Since the estimated weight for stocker animals was less than the specified weight range of the feeder cattle futures contract (700–849 lb), we adjusted the average futures price upwards by \$5.00 per cwt by taking the slide factor determined by LMIC (in this case \$4.00/cwt) and multiplying this factor by the difference between the futures contract weight and the estimated weight ( $775 \text{ lb} - 650 \text{ lb} = 125 \text{ lb or } 1.25 \text{ cwt}$ ). So the adjusted average futures price equaled \$92.54 per cwt ( $\$87.54/\text{cwt} + \$5.00/\text{cwt}$ ). We then arrived at a compensation weight of \$601.51 per head by multiplying the adjusted average futures price of \$92.54 per cwt by the estimated weight of 650 lb ( $\$92.54/\text{cwt} \times 6.50 \text{ cwt} = \$601.51 \text{ per head}$ ).

*Feedlot Animals*

*Estimated weight:* 1,100 lb.

*Average futures price:* \$74.01 per cwt.

*Compensation rate:* \$814.11 per head.

We determined the compensation rate for feedlot animals by taking the simple average of the most recently available daily futures prices over a 3-month period immediately prior to the disease outbreak and multiplying it by the estimated weight for feedlot animals. We looked to the live cattle futures contract traded on the Chicago

Mercantile Exchange, using the contract month that corresponded to the month of the FMD outbreak.

The estimated weight for feedlot beef cattle was set at 1,100 lb, based on the following assumptions. The average slaughter weight of steers and heifers in 1999 and 2000 was 1,262 lb according to NASS statistics. With an average placement weight in 2000 of 700 lb, we determined that the average weight gain while in feedlot was 562 lb. We took into account a set portion of this feedlot weight gain by adding 400 lb to the average placement weight of 700 lb to arrive at the estimated total weight of 1,100 lb for feedlot cattle. There is no need for a price-weight adjustment for feedlot beef cattle.

Based on an early April 2001 outbreak, we determined the compensation rate for feedlot beef cattle to be \$814.11 per head based on an average futures price of \$74.01 per cwt and an estimated weight of 1,100 lb ( $\$74.01/\text{cwt} \times 11.0 \text{ cwt} = \$814.11 \text{ per head}$ ).

*Dairy Cattle*

*Commercial Dairy Cows (Female Cows That Are In Milk or Have Been in Milk)*

*Compensation rate:* \$1,320 per head.

In its publication *Agricultural Prices*, NASS reports quarterly prices received by producers for cows sold for milking purposes in the top dairy States and a national price average. In theory, a female dairy cow reaches maximum value when she first starts to produce milk. The dairy cow price reported by NASS covers animals already in milk production and thus below their maximum value. Cows ready to be culled (nearing the end of their last lactation) are greatly discounted as the value of culled cows is much lower than that of cows that are milked another lactation. We believe the NASS price reasonably reflects the value of the milking string. Prices are reported by NASS for the months of January, April, July, and October and are available at the end of the following month. January's price would be used if the FMD outbreak occurred in the months of April, May, or June; April's price would be used if the outbreak occurred in the months of July, August, or September; July's price would be used if the outbreak occurred in the months of October, November, and December; and October's price would be used if the outbreak occurred in the months of January, February, or March.

Based on an early April 2001 outbreak, we determined the compensation rate for commercial dairy cows was \$1,320 per head. This rate

came from the most recently reported quarterly price per head for commercial dairy cows from NASS.

*Non-Bred Heifer Replacements and Sexually Immature Bulls*

*Compensation rate:* \$924 per head.

The rate for non-bred heifer replacements and sexually immature bulls equals 70 percent of the rate determined for commercial dairy cows. The lower percentage rate for non-bred replacements and sexually immature bulls reflects that these are younger animals with lower paid-in costs. For an early April 2001 outbreak, we determined the compensation rate was \$924 per head ( $\$1,320 \times 70 \text{ percent}$ ).

*Bred Heifer Replacements*

*Compensation rate:* \$1,584 per head.

The rate for bred heifer replacements equals 120 percent of the rate determined for commercial dairy cows. We provide this higher value over commercial dairy cows to reflect that bred heifers are at the start of their productive life. For an early April 2001 outbreak, we determined that the rate bred heifer replacements was \$1,584 per head ( $\$1,320 \times 120 \text{ percent}$ ).

*Swine*

*Grower-Finisher Pigs*

*Estimated weight:* 200 lb.

*Average futures price (adjusted):* \$49.02 per cwt.

*Compensation rate:* \$98.04 per head.

We calculated the compensation rate for grower-finisher pigs by taking the simple average of the most recently available daily futures prices over a 3-month period immediately prior to the disease outbreak, and multiplying it by the estimated weight for grower-finisher pigs. We relied on the lean hogs contract traded on the Chicago Mercantile Exchange, using the contract month that corresponded to the month of the FMD outbreak.

We determined that the estimated weight of grower-finisher pigs was 200 lb based on the following assumptions. We assumed that pigs were 50 lb when entering the grower-finisher phase and were slaughtered at 255 lb, which was the average slaughter weight for 1999 and 2000 according to NASS data (*Livestock Slaughter*, January 2001). This represented an average weight gain of 205 lb. We took into account a set portion of this weight gain by adding 150 lb to the average weight of 50 lb for pigs entering the grower-finisher phase to arrive at the estimated total weight of 200 lb for grower-finisher pigs.

It was necessary to adjust the average futures price since the futures contract

price is based on the slaughter (carcass) price and not on live animals. A hog carcass weighs approximately 74 percent of a live hog. The weight difference represents dressing. We arrived at an adjusted average futures price of \$49.02/cwt, which we then multiplied by the estimated weight of 200 lb to get a compensation rate of \$98.04 per head ( $\$49.02/\text{cwt} \times 2.00 \text{ cwt}$ ).

#### Nursery Pigs

**Compensation rate:** \$51.70 per head. We determined the rate for nursery pigs by taking the simple average of the most recently available national feeder pig (40 lb) prices reported by AMS. These prices are reported on a weekly basis. We took the simple average over a 3-month period immediately prior to the date of the disease outbreak. The AMS prices for these animals are reported on a per-head basis, so it is not necessary to determine the compensation weight. The average feeder pig price over this 3-month period was \$51.70 per head.

#### Preweaned Piglets

**Compensation rate:** \$32.72 per head. We determined the rate for preweaned piglets by taking the simple average of the most recently available national early weaned pig (10 lb) prices, as reported by AMS. These prices are reported on a weekly basis. We took the simple average over a 3-month period immediately prior to the date of the disease outbreak. The AMS prices for these animals are also reported on a per-head basis, so it is not necessary to determine the compensation weight. The average national early weaned pig price over this 3-month period was \$32.72 per head.

#### Sheep

##### Slaughter Lambs and Wethers Raised for Wool Production

**Estimated weight:** 130 lb.

**Price:** \$76.74 per cwt.

**Compensation rate:** \$99.76 per head.

We determined the compensation rate for slaughter lambs by multiplying the calculated price for slaughter lambs by the estimated weight for this classification of animal.

We calculated the price for slaughter lambs by taking the simple average of the most recently available national lamb carcass prices, as reported by AMS. These prices are reported on a weekly basis. We normally take the simple average over a 3-month period immediately prior to the date of the disease outbreak, which we would then multiply by a dressing percentage of 49.5 percent. However, this is a new

AMS price series, and there was less than 3 months of available price data.

Based on NAHMS data, the average slaughter weight of lambs is 145 lb and the average feedlot placement weight is 85 lb. Therefore, we determined the average weight gain of lambs during the feedlot or finishing phase to be 60 lb. We took into account a set portion of this weight gain by adding 45 lb to the average placement weight of 85 lb to arrive at the estimated total weight of 130 lb for slaughter lambs. We then calculated the compensation rate to be \$99.76 per head by multiplying the average AMS lamb carcass price by the dressing percentage by the compensation weight ( $\$155.03/\text{cwt} \times 49.5 \text{ percent} \times 1.30 \text{ cwt} = \$99.76 \text{ per head}$ ). The compensation rate determined for slaughter lambs would also apply to wethers raised for wool production.

#### Preweaned Lambs

**Estimated weight:** 70 lb.

**Adjusted price:** \$82.11 per cwt.

**Compensation rate:** \$57.48 per head.

We determined the compensation rate for preweaned lambs by taking the price calculated for slaughter lambs (\$76.74/cwt) and adding a price-weight adjustment of 7 percent or \$5.37/cwt based on the weight differential between slaughter lambs and preweaned lambs. We then multiplied the adjusted price of \$82.11/cwt by the assigned estimated weight of 70 lb, which is the average weaning weight of these animals according to 2001 NAHMS data, to get a compensation rate of \$57.48 per head ( $(\$76.74/\text{cwt} + \$5.37/\text{cwt}) \times .70 \text{ cwt}$ ).

#### Weaned Feeder Lambs

**Estimated weight:** 85 lb.

**Adjusted price:** \$81.34 per cwt.

**Compensation rate:** \$69.13 per head.

We used 85 lb as the estimated weight for weaned feeder lambs, which corresponds to the average weight of lambs entering a feedlot or finishing stage prior to slaughter. We then calculated the compensation rate for weaned feeder lambs by taking the price calculated for slaughter lambs (\$76.74/cwt) and adding a price-weight adjustment of 6 percent or \$4.60/cwt based on the weight differential between slaughter lambs and weaned feeder lambs. This price-weight adjustment is generally positive, except during periods of high feed costs. We then multiplied the adjusted average price of \$81.34/cwt by the assigned estimated weight of 85 lb for weaned feeder lambs to get a compensation rate of \$69.13 per head ( $(\$76.74/\text{cwt} + \$4.60/\text{cwt}) \times .85 \text{ cwt}$ ).

## Breeding Animals

### Beef Cattle

#### Beef Cows (Commercial Herds)

**Estimated weight:** 1,000 lb.

**Price:** \$74.01 per cwt (same price per cwt paid for feedlot beef cattle).

**Compensation rate:** \$740.10 per head. The average weight of a beef cow is 1,016 lb according to NAHMS data (Beef, 1997). Therefore, we used 1,000 lb as the estimated weight for commercial beef cows. A comparison of fed beef cattle prices and prices for bred young females and middle age cows (*Drovers' Journal*) found that bred cow prices were 83 percent of fed beef cattle prices. Though the premium for breeding purposes is not readily known, we note that by providing the same compensation rate (\$/cwt) for commercial breeding beef cows as is used for feedlot beef cattle would provide some measure of the value given for breeding purposes. Therefore, we calculated the compensation rate for beef cows by taking the applicable futures price (\$/cwt) calculated for feedlot beef cattle (\$74.01/cwt), and multiplying that average price by the estimated weight of 1,000 lb for beef cows. For an early April 2001 outbreak, we determined the compensation rate for beef cows (commercial herds) was \$740.10 per head ( $\$74.01 \times 10.0 \text{ cwt} = \$740.10 \text{ per head}$ ).

#### Bred Replacement Heifers (Commercial Herds)

**Compensation rate:** \$888.12 per head.

To reflect that bred heifers are at the start of their productive life, these animals were valued at 120 percent of the compensation rate for beef cows (commercial herds). For an early April 2001 outbreak, we determined the rate for bred replacement heifers to be \$888.12 per head ( $\$740.10 \text{ per head} \times 120 \text{ percent}$ ).

#### Beef Bulls (Commercial Herds)

**Compensation rate:** \$1,850.25 per head.

The rate for beef bulls (commercial herds) equals 250 percent of the rate established for beef cows (commercial herds). For an early April 2001 outbreak, we determined that the rate for beef bulls was \$1,850.25 per head ( $\$740.10 \times 250 \text{ percent}$ ).

#### Registered animals, animals in a seedstock herd, and donor animals:

### Beef Cows and Bred Replacement Heifers

**Compensation rate:** \$1,850.25 per head.

Beef cows and bred replacement heifers that are breeding animals and are

also registered animals, part of a seedstock herd, or donor animals receive 250 percent of the compensation rate established for beef cows (commercial herds). For an early April 2001 outbreak, we determined the rate was \$1,850.25 per head ( $\$740.10 \times 250$  percent).

#### Beef Bulls

*Compensation rate:* \$2,220.30 per head.

Beef bulls that are breeding animals and are also registered animals, part of a seedstock herd, or donor animals receive 300 percent of the compensation rate established for beef cows (commercial herds). For an early April 2001 outbreak, we determined the rate for these animals was \$2,220.30 per head ( $\$740.10 \times 300$  percent).

#### Dairy Cattle

##### Dairy Bulls

*Compensation rate:* \$3,300 per head.

Using the same bull-cow relationship as with beef animals, the rate for breeding dairy bulls equals 250 percent of the rate determined for commercial dairy cows. For an early April 2001 outbreak, we determined the rate was \$3,300 per head ( $\$1,320 \times 250$  percent).

*Registered animals, animals in a seedstock herd, and donor animals:*

#### Dairy Cows and Bred Replacement Heifers

*Compensation rate:* \$3,300 per head.

The rate for dairy cows and bred replacement heifers that are breeding animals and are also registered animals, part of a seedstock herd, or donor animals equals 250 percent of the rate established for commercial dairy cows. For an early April 2001 outbreak, we determined the rate for cows and bred replacement heifers was \$3,300 per head ( $\$1,320 \times 250$  percent).

#### Dairy Bulls

*Compensation rate:* \$3,960 per head.

The rate for dairy bulls that are breeding animals and are also registered animals, part of a seedstock herd, or donor animals equals 300 percent of the rate established for commercial dairy cows. For an early April 2001 outbreak, we determined the compensation rate for bulls was \$3,960 per head ( $\$1,320 \times 300$  percent).

#### Swine

##### Sows and Boars (Commercial Herds)

*Compensation rate:* \$196.08 per head.

The rate for commercial sows and boars equals 200 percent of the rate established for grower-finisher pigs. For an early April 2001 outbreak, we

determined the rate was \$196.08 per head ( $\$98.04$  per head (grower-finisher rate)  $\times 200$  percent).

*Registered animals, animals in a seedstock herd, and donor animals:*

*Compensation rate:* \$294.12 per head.

The rate for pigs that are breeding animals and are also registered animals, part of a seedstock herd, or donor animals equals 300 percent of the rate established for grower-finisher pigs. The value of seedstock boars would be the same as seedstock sows. For an early April 2001 outbreak, we determined the rate for seedstock sows and boars to be \$294.12 per head ( $\$98.04$  per head (grower-finisher rate)  $\times 300$  percent).

#### Sheep

##### Commercial Ewes

*Estimated weight:* 160 lb.

*Price:* \$76.74 per cwt (same adjusted price per cwt used for slaughter lambs).

*Compensation rate:* \$122.78 per head. In determining the compensation rate for commercial ewes, we would use the average AMS price (\$76.74/cwt) calculated for slaughter lambs, and multiply this average price by the estimated weight for commercial ewes. The slaughter lamb price is greater than the cull ewe slaughter price. By providing the higher slaughter lamb price for breeding ewes and applying the breeding animal weight, we recognize a premium that these breeding animals might receive. We also determined the estimated weight of commercial ewes to be 160 lb. Therefore, for an early April 2001 outbreak, we determined the rate for commercial ewes was \$122.78 per head ( $\$76.74/\text{cwt} \times 160$  lb).

##### Commercial Rams

*Estimated weight:* 200 lb.

*Price:* \$76.74 per cwt.

*Compensation rate:* \$153.48 per head.

In determining the compensation rate for commercial rams, we would use the average AMS price (\$76.74/cwt) calculated for slaughter lambs, and multiply this average price by the estimated weight for commercial rams. The slaughter lamb price is greater than the cull ram slaughter price. By providing the higher lamb slaughter price for breeding rams and applying the breeding animal weight, we recognize a premium that these breeding animals might receive. We also determined the estimated weight of commercial rams to be 200 lb. Therefore, for an early April 2001 outbreak, we determined the rate for commercial breeding rams was \$153.48 per head ( $\$76.74/\text{cwt} \times 200$  lb).

*Registered animals, animals in a seedstock flock, and donor animals:*

*Compensation rate for breeding ewes:* \$245.56 per head.

*Compensation rate for breeding rams:* \$306.96 per head.

The rate for ewes or rams that are breeding animals and are also registered animals, part of a seedstock flock, or donor animals equals 200 percent of the rate established for commercial breeding ewes and rams. For an early April 2001 outbreak, we determined the rate for ewes was \$245.56 per head ( $\$122.78$  per head  $\times 200$  percent) and the rate for rams was \$306.96 per head ( $\$153.48$  per head  $\times 200$  percent).

#### List of Subjects in 9 CFR Part 53

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

Accordingly, we propose to revise 9 CFR part 53 to read as follows:

#### PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

##### Sec.

###### 53.1 Definitions.

53.2 Disease control and eradication; payments authorized; determination of disease.

53.3 Payments for animals and materials; other compensation; request for review.

53.4 Destruction of animals.

53.5 Disinfection or destruction of materials.

53.6 Cleaning and disinfection of animals.

53.7 Presentation of claims.

53.8 Claims not allowed.

**Authority:** 21 U.S.C. 111, 114, 114a, and 134a–134h; 7 CFR 2.22, 2.80, and 371.4.

**Cross Reference:** For nonapplicability of part 53 with respect to certain claims for indemnity, see §§ 50.15 and 51.10 of this chapter.

##### § 53.1 Definitions.

**Accredited veterinarian.** A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in parts 1, 2, 3, and 11 of subchapter A of this chapter and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

**Administrator.** The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

**Animal and Plant Health Inspection Service (APHIS).** The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

**Animals.** Livestock, poultry, and all other members of the animal kingdom, including birds whether domesticated or wild, but not including man.

**Animals affected by disease.** Animals determined to be infected with, infested with, or exposed to, a disease covered by this part, including official vaccines.

**APHIS representative.** Any individual employed by or acting as an agent on behalf of the Animal and Plant Health Inspection Service who is authorized by the Administrator to perform the services required by this part.

**Bird.** Any member of the class *aves* other than poultry.

**Breeding animal.** Any animal being raised for the purpose of producing market animals or other breeding animals and, in the case of a female, has donated embryos or been bred, and in the case of a male, is sexually intact and has reached the age of sexual maturity.

**Commercial breeding animal.** Any breeding animal other than a registered animal, an animal that is part of a seedstock herd or flock, or a donor animal.

**Department.** The United States Department of Agriculture.

**Disease.** Any communicable disease of livestock or poultry for which indemnity is not provided elsewhere in this subchapter, and contagious or infectious animal diseases, such as foot-and-mouth disease, rinderpest, contagious pleuropneumonia, exotic Newcastle disease, highly pathogenic avian influenza, and infectious salmon anemia that, in the opinion of the Secretary, constitute an emergency or an extraordinary emergency and threaten the livestock or poultry of the United States.

**Disease outbreak.** The initial occurrence of the disease, as determined and reported by the United States Department of Agriculture.

**Donor animal.** Any animal, other than a registered animal or an animal that is part of a seedstock herd, that has donated at least two embryos, in the case of females, or at least 100 units of semen, in the case of males, for sale to another producer or transfer to a separate herd or flock.

**Endangered or threatened species.** Those species defined as endangered species or threatened species in the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated thereunder and as they may be subsequently amended.

**Exotic animal.** Any animal that is native to a foreign country or of foreign origin or character, or is not native to the United States.

**Exotic Newcastle disease (END).** Any velogenic Newcastle disease. Exotic Newcastle disease is an acute, rapidly spreading, and usually fatal viral disease of birds and poultry.

**Federal veterinarian.** A veterinarian employed and authorized by the Federal Government to perform the services required by this part.

**Highly pathogenic avian influenza.**

(1) Any influenza virus that kills at least 75 percent of eight 4- to 6-week-old susceptible chickens within 10 days following intravenous inoculation with 0.2 ml of a 1:10 dilution of a bacteria-free, infectious allantoic fluid;

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

(3) Any influenza virus that is not an H5 or H7 subtype and that kills one to five chickens in the test described in paragraph (1) of this definition and grows in cell culture in the absence of trypsin.

**ISA Program Veterinarian.** The APHIS veterinarian assigned to manage the infectious salmon anemia program for APHIS in the State of Maine and who reports to the area veterinarian in charge.

**Livestock Marketing Information Center.** The organization, funded cooperatively by the United States Department of Agriculture, State land grant universities, and livestock industry associations, that develops, disseminates, and maintains economic and market data relating to the livestock industry.

**Market animal.** Any animal being raised for the primary purpose of slaughter for meat, or, in the case of dairy animals, the production of milk, or, in the case of certain sheep, the production of wool.

**Materials.** Barns or other structures; straw, hay, and other feed and bedding for animals; agricultural products and byproducts; conveyances; equipment; clothing; and any other article.

**National Veterinary Services Laboratories.** The organizational unit within the Animal and Plant Health Inspection Service delegated responsibility for providing services for the diagnosis of domestic and foreign animal diseases, diagnostic support for disease control and eradication programs, import and export testing of animals, training, and laboratory certification for selected diseases.

**Official vaccine.** Any animal that has been:

(1) Vaccinated with an official vaccine for foot-and-mouth disease under the

supervision of a State or Federal veterinarian;

(2) Identified by an eartag specifically approved by APHIS for identification of animals officially vaccinated for foot-and-mouth disease; and

(3) Reported to the Administrator as an official vaccinee for foot-and-mouth disease promptly after vaccination by the State or Federal veterinarian supervising the vaccination.

**Person.** Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

**Poultry.** Chickens, ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl.

**Rare animal.** An animal that is extremely uncommon in the United States and that is neither an exotic animal nor a member of an endangered or threatened species.

**Registered animal.** An animal of a particular breed for which individual records of ancestry are maintained, and for which individual registration certificates are issued and recorded by a recognized breed association whose purpose is the improvement of the breed.

**Secretary.** The Secretary of Agriculture of the United States or any officer or employee of the Department authorized to act for the Secretary.

**Seedstock herd or flock.** In the case of cattle and sheep, a herd or flock in which, during the previous 5 years, at least 25 percent of the animals born to the herd or flock have, for breeding purposes, been sold to another producer or transferred to a separate herd or flock, or, in the case of swine, a herd in which at least 50 percent of the gilts produced have, for breeding purposes, been sold to another producer or transferred to a separate herd.

**State.** Each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

**State representative.** An individual employed by a State or a political subdivision to perform the specified functions agreed to by the Department and the State.

**State veterinarian.** A veterinarian employed and authorized by a State or its political subdivision to perform the services required by this part.

### § 53.2 Disease control and eradication; payments authorized; determination of disease.

(a) **Disease control and eradication.** (1) The Administrator may cooperate

with States, political subdivisions, farmers' associations and similar organizations, and individuals to control and eradicate disease. Upon agreement of the States, political subdivisions, farmers' associations and similar organizations, or individuals to cooperate with the Administrator in the control and eradication of disease, the Administrator may pay, subject to the availability of funding, the costs of activities listed in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section:

(i) Purchase, destruction, and disposition of animals affected by disease;

(ii) Purchase, destruction, and disposition of materials contaminated by or exposed to a disease agent when the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable; and

(iii) Cleaning and disinfection of materials that are contaminated by or exposed to a disease agent.

(2) The Administrator is authorized to pay 50 percent of the costs under paragraphs (a)(1)(i) and (a)(1)(ii) of this section; except that for infectious salmon anemia the Administrator may pay up to 60 percent of the costs under paragraphs (a)(1)(i) and (a)(1)(ii) of this section; and except that for exotic Newcastle disease or highly pathogenic avian influenza, or any other case where the animals were affected by a disease prior to or during interstate movement and are not eligible to receive indemnity from any State, the Administrator may pay up to 100 percent of the costs under paragraphs (a)(1)(i) and (a)(1)(ii) of this section; and except that for foot-and-mouth disease, the Administrator will pay 100 percent of the costs under paragraphs (a)(1)(i) and (a)(1)(ii) of this section: *Provided, however,* That when the Secretary determines an extraordinary emergency exists, the Administrator will pay 100 percent of the costs (i.e., the fair market value) under paragraphs (a)(1)(i) and (a)(1)(ii) of this section, subject to the availability of funding: *Provided, further,* That any compensation paid will not exceed the difference between the compensation received from a State or other source and the fair market value of the animals or materials.

(3) Costs incurred under paragraph (a)(1)(iii) of this section will be shared by the Department and the State as agreed to by the Department and the State in which the work is done: *Provided, however,* That in the case of foot-and-mouth disease, the Administrator will pay 100 percent of

the fair and reasonable costs incurred under paragraph (a)(1)(iii) of this section.

(4) A cooperative program for the purchase, destruction, and disposition of birds will be limited to birds determined by the Administrator to constitute a threat to the poultry industry of the United States.

*(b) Determination of disease.*

(1) The determination that animals are affected by disease will be made by either a Federal veterinarian or a State veterinarian who has completed the APHIS course on foreign animal disease diagnosis.<sup>1</sup> The determination that animals are affected by disease will be based on such factors as clinical evidence of the disease (signs, necropsy lesions, and history of the occurrence of the disease), diagnostic tests for the disease based on National Veterinary Services Laboratories-approved protocols,<sup>2</sup> or epidemiological evidence (evaluation of clinical evidence and the degree of risk posed by the potential spread of the disease based on the virulence of the disease, its known means of transmission, and the particular species involved).

(2) The determination that materials are contaminated by or exposed to a disease agent shall be made by an APHIS representative or a State representative, based on the guidance of a Federal veterinarian or a State veterinarian.

**§ 53.3 Payments for animals and materials; other compensation; request for review.**

(a) *Valuation of animals.* The value of animals affected by disease and subject to destruction will be the fair market value based on an appraisal of the animals: *Provided, that,* In the case of foot-and-mouth disease only, if the Administrator determines that appraisal of animals affected by disease would be impracticable, or would otherwise compromise efforts to effectively control and eradicate the disease, the Administrator may determine the fair market value of certain animals by a fixed-rate method, as provided in paragraph (a)(2) of this section.

(1) *Appraisal.* Appraisals will be conducted jointly by an APHIS

<sup>1</sup> The locations of qualified Federal veterinarians and State veterinarians may be obtained by writing to Emergency Programs, Veterinary Services, Animal and Plant Health Inspection Service, USDA, 4700 River Road, Unit 41, Riverdale, MD 20737-1231, or by referring to the local telephone book.

<sup>2</sup> A copy of the protocols for diagnostic tests of diseases covered by this part may be obtained by writing to Emergency Programs, Veterinary Services, Animal and Plant Health Inspection Service, USDA, 4700 River Road Unit 41, Riverdale, MD 20737-1231.

representative and a State representative, or, if the State authorities approve, by an APHIS representative alone. Animals may be appraised in groups provided they are the same species and type and provided that, where appraisal is by the head, each animal in the group is the same value per head, or where appraisal is by the pound, each animal in the group is the same value per pound.

(2) *Fixed-rate method.* The Administrator will establish rates based on the value per head for cattle (beef and dairy cattle), swine, and sheep as provided in paragraphs (a)(2)(i) through (a)(2)(iii) of this section. Rates may be established for other animals for which the Administrator finds sufficient information publicly available to make a calculation of the animal's fair market value in accordance with the procedures provided in paragraph (a)(2) of this section.

*(i) Classification.*

(A) Animals within each species will be classified as market animals or breeding animals.

(B) Market animals will be further classified according to their production phase, including whether or not the animals are weaned and whether or not the animals are on finishing rations (i.e., at a feedlot or finishing barn) as follows:

(1) *Beef cattle.* Preweaned calves; non-feedlot, but weaned (stocker) animals; and feedlot animals.

(2) *Dairy cattle.* Commercial dairy cows (female dairy cows that are/have been in milk), non-bred heifer replacements and sexually immature bulls, and bred heifer replacements.

(3) *Swine.* Grower-finisher pigs, nursery pigs, and preweaned piglets.

(4) *Sheep.* Preweaned lambs, weaned feeder lambs, slaughter lambs, and wethers raised for wool production.

(C) Breeding animals will be further classified based on whether they are commercial breeding animals, or are registered animals, part of a seedstock herd or flock, or donor animals as follows:

(1) *Beef cattle.* Beef cows (commercial herds); bred replacement heifers (commercial herds); beef bulls (commercial herds); and registered animals, animals in a seedstock herd, and donor animals.

(2) *Dairy cattle.* Dairy bulls; and registered animals, animals in a seedstock herd, and donor animals.

(3) *Swine.* Sows and boars (commercial herds); and registered animals, animals in a seedstock herd, and donor animals.

(4) *Sheep.* Ewes and rams (commercial flocks); and registered

animals, animals in a seedstock flock, and donor animals.

(ii) *Rates for market animals.*—(A) *Beef cattle.* The rates established for different classifications of beef cattle will be based on prices from applicable futures contracts traded on the Chicago Mercantile Exchange. The rates for preweaned calves and stocker animals will be based on the feeder cattle futures contract. The rate for feedlot animals will be based on the live cattle futures contract. The rate will be determined by multiplying the applicable futures price (\$/cwt) by the estimated weight set by APHIS for that classification of animal.

(1) The applicable futures price (\$/cwt) will be the simple average of the most recently available daily futures prices over a 3-month period immediately prior to the date of the disease outbreak using the futures contract month that corresponds to the month of the disease outbreak, or the next succeeding contract month if there is not an applicable futures contract for the month that corresponds to the month of the disease outbreak: Provided, however, In the case of preweaned beef calves, the applicable futures price will be the simple average of the most recently available daily futures prices for that animal over a 3-month period using the futures contract month that corresponds to the month the claimant has historically weaned their calves, or the next succeeding contract month if there is not an applicable futures contract for the month that corresponds to the month of planned weaning.

(2) The estimated weight set by APHIS for different classifications of beef cattle will be the average weight of animals in that production phase based on the most recently available information from the Department's National Agricultural Statistics Service (NASS) and National Animal Health Monitoring System (NAHMS).

(3) If the estimated weight for a particular classification of animal does not fall within the weight range of the animal covered by the futures contract, an upward or downward adjustment in the average futures price will be made to reflect this difference in weight and to account for the fact that the price per cwt varies with the total weight of the animal. The adjustment will be calculated by multiplying the price-weight adjustment factor, as determined by the Livestock Marketing Information Center, by the difference between the average weight of the animal covered by the futures contract and the estimated weight set by APHIS for that classification of animal.

(B) *Dairy cattle.* The rate established for commercial dairy cows will be based on the most recent quarterly price per head reported by NASS. The rate for non-bred heifer replacements and sexually immature bulls will be 70 percent of the rate determined for commercial dairy cows. The rate for bred heifer replacements will be 120 percent of the rate determined for commercial dairy cows.

(C) *Swine.*—(1) *Grower-finisher pigs.* The rate established for grower-finisher pigs will be based on the lean hogs futures contract traded on the Chicago Mercantile Exchange. The rate will be determined by multiplying the applicable futures price (\$/cwt) by the estimated weight set by APHIS for grower-finisher pigs.

(i) The applicable futures price (\$/cwt) for grower-finisher pigs will be the simple average of the most recently available daily futures prices over a 3-month period immediately prior to the date of the disease outbreak using the futures contract month that corresponds to the month of the disease outbreak, or the next succeeding contract month if there is not an applicable futures contract for the month that corresponds to the month of the disease outbreak, multiplied by 74 percent.

(ii) The estimated weight set by APHIS for grower-finisher pigs will be the average weight of grower-finisher pigs based on the most recently available information from NASS and NAHMS.

(2) *Nursery pigs.* The rate established for nursery pigs will be based on the simple average of the most recently available national feeder pig (40 lb) prices reported by the Department's Agricultural Marketing Service (AMS) over a 3-month period immediately prior to the date of the disease outbreak.

(3) *Preweaned piglets.* The rate established for preweaned piglets will be based on the simple average of the most recently available national early weaned pig (10 lb) prices reported by AMS over a 3-month period immediately prior to the date of the disease outbreak.

(D) *Sheep.* The rate established for preweaned lambs, weaned feeder lambs, slaughter lambs, and wethers raised for wool production will be based on the national lamb carcass price, as reported by AMS. The rate will be determined by multiplying the average AMS price (\$/cwt) by the estimated weight set by APHIS for that classification of animal.

(1) The average AMS price (\$/cwt) will be the simple average of the most recently available national lamb carcass prices reported by AMS over a 3-month period immediately prior to the date of

the disease outbreak, multiplied by the AMS reported dressing percentage, or 49.5 percent if the dressing percentage is not reported.

(2) The estimated weight set by APHIS for preweaned lambs, weaned feeder lambs, slaughter lambs, and wethers raised for wool production will be the average weight of animals in that production phase based on the most recently available information from NASS and NAHMS.

(3) For preweaned lambs and weaned feeder lambs, an upward or downward percentage adjustment in the average AMS price will be made to reflect the difference in weight between preweaned lambs or weaned feeder lambs and slaughter lambs. The price-weight percentage adjustment will be supplied by the Livestock Marketing Information Center.

(iii) *Rates for breeding animals.*—(A) *Generally.* The rates for breeding animals will be determined based on the rates of other market or breeding animals, and then adjusted to include any premium that reflects the animals' breeding value. Breeding animals that are registered animals, animals in a seedstock herd or flock, or animals that have donated germ plasm that has been sold to other producers or transferred to separate herds or flocks, will receive a higher premium than commercial breeding animals.

(B) *Beef cattle.*—(1) *Beef cows (commercial herds).* (i) The rate established for beef cows (commercial herds) that are breeding animals will be determined by multiplying the applicable futures price (\$/cwt) for feedlot animals, as described in paragraph (a)(2)(ii)(A)(1) of this section, by the estimated weight set by APHIS for beef cows.

(ii) The estimated weight set by APHIS for beef cows will be the average weight of beef cows based on the most recently available information from NASS and NAHMS.

(2) *Bred replacement heifers (commercial herds).* The rate established for bred replacement heifers (commercial herds) that are breeding animals will be 120 percent of the rate established for beef cows (commercial herds).

(3) *Beef bulls (commercial herds).* The rate established for beef bulls (commercial herds) that are breeding animals will be 250 percent of the rate established for beef cows (commercial herds).

(4) *Registered animals, animals in a seedstock herd, and donor animals.*—(i) The rate established for beef cows and bred replacement heifers that are breeding animals and are registered

animals, part of a seedstock herd, or donor animals, will be 250 percent of the rate established for beef cows (commercial herds).

(ii) The rate established for beef bulls that are breeding animals and are registered animals, part of a seedstock herd, or donor animals, will be 300 percent of the rate established for beef cows (commercial herds).

(C) *Dairy cattle.*—(1) *Dairy bulls.* The rate established for dairy bulls that are breeding animals will be 250 percent of the rate established for commercial dairy cows.

(2) *Registered animals, animals in a seedstock herd, and donor animals.*

(i) The rate established for dairy cows and bred replacement heifers that are breeding animals and are registered animals, part of a seedstock herd, or donor animals, will be 250 percent of the rate established for commercial dairy cows.

(ii) The rate established for dairy bulls that are breeding animals and are registered animals, part of a seedstock herd, or donor animals, will be 300 percent of the rate established for commercial dairy cows.

(D) *Swine.*—(1) *Sows and boars (commercial herds).* The rate established for commercial sows and boars that are breeding animals will be 200 percent of the rate established for grower-finisher pigs.

(2) *Registered animals, animals in a seedstock herd, and donor animals.*

(i) The rate established for sows that are breeding animals and are registered animals, part of a seedstock herd, or donor animals, will be 300 percent of the rate established for grower-finisher pigs.

(ii) The rate established for boars that are breeding animals and are registered animals, part of a seedstock herd, or donor animals, will be 300 percent of the rate established for grower-finisher pigs.

(E) *Sheep.*—(1) *Ewes and rams (commercial flocks).*

(i) The rate established for commercial ewes and rams that are breeding animals will be determined by multiplying the average AMS price (\$/cwt) for slaughter lambs, as described in paragraph (a)(2)(ii)(D)(1) of this section, by the estimated weight set by APHIS for commercial ewes and rams.

(ii) The estimated weight set by APHIS for commercial ewes and rams will be the average weight of those animals based on the most recently available information from NASS and NAHMS.

(2) *Registered animals, animals in a seedstock flock, and donor animals.*

(i) The rate established for ewes that are breeding animals and are registered animals, part of a seedstock flock, or donor animals, will be 200 percent of the rate established for commercial breeding ewes.

(ii) The rate established for rams that are breeding animals and are registered animals, part of a seedstock flock, or donor animals, will be 200 percent of the rate established for commercial breeding rams.

(iv) *Request for appraisal.* An owner of animals subject to valuation by the fixed-rate method may submit a written request to the Administrator asking that the animals affected by disease be valued by appraisal instead of by fixed-rate method. The owner must include in the request the reasons why valuation by the fixed-rate method would be unsuitable. In determining whether to grant the request, the Administrator will take into account whether allowing the appraisal would compromise efforts to effectively control and eradicate the disease. The decision by the Administrator regarding the owner's request for appraisal is final. A denial of a request for appraisal under this paragraph does not affect the owner's right to request a review of the valuation under paragraph (d) of this section.

(b) *Valuation of materials.* The value of materials destroyed because of contamination or exposure to a disease agent will be the material's fair market value based on an appraisal: *Provided, that*, In the case of foot-and-mouth disease only, if an appraisal is found to be impracticable, or would otherwise compromise efforts to effectively control and eradicate the disease, the Administrator may authorize the value to be determined by other means, such as through records or other documentation maintained by the claimant indicating the value of the materials destroyed. The appraisal of materials will be conducted jointly by an APHIS representative and a State representative, or, if the State authorities approve, by an APHIS representative alone.

(c) *Other compensation.*—(1) *Costs for cleaning and disinfection.* Compensation for cleaning and disinfection will be based on receipts or other documentation maintained by the claimant verifying expenditures for cleaning and disinfection activities authorized by this part.

(2) *[Reserved]*

(d) *Request for review.* A claimant who disagrees with the valuation in total of all animals or all materials or the amount of other compensation, as determined in this section, may submit a written request for review to the

Administrator. The claimant must include in the request the reasons, including any supporting documentation, that the valuation in total of all animals or all materials or the amount of other compensation should be different from the valuation or amount determined by appraisal, fixed-rate method, or other means provided for in this section. The decision by the Administrator regarding the valuation of animals or materials or the amount of other compensation is final.

#### § 53.4 Destruction of animals.

(a) With the exception of official vaccines, animals affected by disease must be destroyed promptly after valuation and disposed of by burial, burning, or other manner approved by the Administrator as not contributing to the spread of the disease.

(b) The destruction of animals and the burial, burning, or other disposal of carcasses of animals under this part must be under the supervision of an APHIS representative or a State representative who will prepare and transmit to the Administrator a report identifying the animals destroyed and the manner of their disposition.

(c) Official vaccines will be destroyed or otherwise handled in a manner as directed by the Administrator to prevent the dissemination of the disease. Official vaccines not subject to destruction may include, at the discretion of the Administrator, exotic animals, rare animals, or animals belonging to an endangered or threatened species. If official vaccines are allowed to move to a slaughtering or rendering facility in lieu of destruction or disposition by other means, then any proceeds gained from the sale of the animals to the slaughtering or rendering facility will be subtracted from any indemnity payment from APHIS for which the producer is eligible under § 53.2(a)(2) of this part.

(d) In the case of animals depopulated due to infectious salmon anemia, salvageable fish may be sold for rendering, processing, or any other purpose approved by the Administrator. If fish retail salvage value, the proceeds gained from the sale of the fish will be subtracted from any indemnity payment from APHIS for which the producer is eligible under § 53.2(a)(2).

#### § 53.5 Disinfection or destruction of materials.

All materials that have been contaminated by or exposed to a disease agent must be cleaned and disinfected under the supervision of an APHIS representative or a State representative: *Provided, however, That in cases in*

which the cost of cleaning and disinfecting materials would exceed the materials' value or cleaning and disinfecting the materials would be impracticable, the materials shall be destroyed under the supervision of an APHIS representative or a State representative, upon determination of their value as provided in § 53.3. The APHIS representative or State representative will prepare and transmit to the Administrator a report identifying all materials destroyed and the manner of their disposition.

#### § 53.6 Cleaning and disinfection of animals.

Animals of species not susceptible to the disease for which a quarantine has been established, but which have been exposed to the disease, must be cleaned and disinfected, as directed by, and under the supervision of, an APHIS representative or a State representative.

#### § 53.7 Presentation of claims.

(a) Claims for compensation under this part must each be presented by the claimant to an APHIS representative on forms approved by APHIS. Claims for animals or materials destroyed must be presented by the owner or the owner's designated representative. The claimant shall provide any available supporting documents that will assist the Administrator, or that are requested by the Administrator, in verifying the quantity and value of animals or materials destroyed and the costs of their disposition, the costs of cleaning and disinfection, and any other costs incurred under this part for which compensation is sought. Examples of supporting documentation include, but are not limited to production records, purchase and sales records, breeding records, registration papers, and receipts.

(b) When animals or materials have been destroyed pursuant to this part, the owner of the animals or materials must certify on the claim whether or not the applicable animals or materials are subject to any mortgage. If there is a mortgage, the owner and each person holding a mortgage on the animals or materials must sign forms approved by APHIS indicating they consent to the payment of any indemnity to the person specified on the forms.

#### § 53.8 Claims not allowed.

(a) The Department will not allow claims arising under this part if the payee has not complied with all Federal quarantine requirements or State quarantine requirements consistent with Federal law or regulations in effect for the control and eradication of the disease.

(b) Costs for the care and feeding of animals held for destruction will not be paid by the Department, unless the payment of such cost is specifically authorized or approved by the Administrator.

(c) The Department will not allow claims arising out of the destruction of animals or materials unless the animals or materials have been valued as prescribed in this part.

(d) The Department will not allow claims arising out of the destruction of animals or materials that have been moved or handled by the owner, or by the owner's representative acting on behalf of the owner, in violation of any Federal law or regulation, or any State law or regulation consistent with a Federal law or regulation, administered to prevent the introduction or dissemination of any contagious or infectious animal disease or any communicable livestock or poultry disease for which the animal or material was destroyed.

(e) The Department will not allow claims arising out of the destruction of fish due to infectious salmon anemia (ISA) unless the claimants have agreed in writing to participate fully in the cooperative ISA control program administered by APHIS and the State of Maine.

Participants in the ISA control program must:

(1) Establish and maintain a veterinary client-patient relationship with an APHIS accredited veterinarian and inform the ISA Program Veterinarian in writing of the name of their accredited veterinarian at the time the participant enrolls in the ISA program and within 15 days of any change in accredited veterinarians.

(2) Cooperate with and assist in periodic on-site disease surveillance, testing, and reporting activities for ISA, which will be conducted by their APHIS accredited veterinarian or a State or Federal official as directed by the ISA Program Veterinarian.

(3) Develop and implement biosecurity protocols for use at all participant-leased finfish sites and participant-operated vessels engaged in aquaculture operations throughout Maine. A copy of these protocols shall be submitted to the ISA Program Veterinarian at the time the participant enrolls in the ISA program and within 15 days of any change in the protocols.

(4) Develop, with the involvement of the participant's accredited veterinarian and the fish site health manager, a site-specific ISA action plan for the control and management of ISA. A copy of the action plan shall be submitted to APHIS for review at the time the participant enrolls in the ISA program and within 15 days of any change in the action plan.

(5) Participate in the State of Maine's integrated pest management (IPM) program for the control of sea lice on salmonids. A copy of the management plan developed by the participant for the State IPM program shall be submitted to APHIS for review at the time the participant enrolls in the ISA program and within 15 days of any change in the management plan.

(6) Submit to the ISA Program Veterinarian at the time the participant enrolls in the ISA program a complete and current fish inventory information for each participant-leased finfish site with site and cage identifiers. Fish inventory information must include the numbers, age, date of saltwater transfer, vaccination status, and previous therapeutic history for all fish in each participant-leased finfish site.

(7) Maintain, and make available to the ISA Program Veterinarian upon request, mortality data for each participant-leased finfish site and pen in production.

(8) Cooperate with and assist APHIS in the completion of biosecurity audits at all participant-leased finfish sites and participant-operated vessels involved in salmonid aquaculture.

(Approved by the Office of Management and Budget under control number 0579-0192)

Done in Washington, DC, this 26th day of April 2002.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

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