

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 94

[Docket No. 02–036–1]

#### Add Yucatan Peninsula to the List of Regions Considered Free of Exotic Newcastle Disease

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations by adding the Mexican States of Campeche, Quintana Roo, and Yucatan to the list of regions considered free of exotic Newcastle disease. We have conducted a risk evaluation and have determined that these three Yucatan Peninsula States have met our requirements for being recognized as free of this disease. This proposed action would allow importation into the United States of poultry and poultry products from these regions and would eliminate restrictions that no longer appear necessary.

**DATES:** We will consider all comments that we receive on or before December 23, 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. 02–036–1, 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. 02–036–1. 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. 02–036–1” 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. Hatim Gubara, Staff Veterinarian, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; phone (301) 734–4356, fax (301) 734–3222.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations pertaining to the importation of animals and animal products are set forth in the Code of Federal Regulations (CFR), title 9, chapter I, subchapter D (9 CFR parts 91 through 99).

Until several years ago, the regulations in parts 91 through 99 (referred to below as the regulations) governed the importation of animals and animal products according to the recognized disease status of the exporting country. In general, if a disease occurred anywhere within a country's borders, the entire country was considered to be affected with the disease, and importations of animals and animal products from anywhere in the country were regulated accordingly. However, international trade agreements entered into by the United States—specifically, the North American Free Trade Agreement and the World Trade Organization Agreement on Sanitary and Phytosanitary Measures—require APHIS to recognize regions, rather than

only countries, for the purpose of regulating the importation of animals and animal products into the United States.

Consequently, on October 28, 1997, we published in the **Federal Register** a final rule (62 FR 56000–56026, Docket No. 94–106–9, effective November 28, 1997) and a policy statement (62 FR 56027–56033, Docket No. 94–106–8) that established procedures for recognizing regions (referred to below as regionalization) for the purpose of regulating the importation of animals and animal products. With the establishment of those procedures, APHIS may consider requests to allow the importation of a particular type of animal or animal product from a foreign region, as well as requests to recognize all or part of a country or countries as a *region*. The regulations define the term region, in part, as “any defined geographic land area identifiable by geological, political, or surveyed boundaries.”

In accordance with these regionalization procedures, we are proposing to amend the regulations in § 94.6 by adding the Mexican States of Campeche, Quintana Roo, and Yucatan to the lists of regions considered free of exotic Newcastle disease (END). This proposed rule would allow importation into the United States of poultry and poultry products from these regions and would eliminate restrictions that no longer appear necessary.

We are also proposing to amend § 94.15, which, among other things, sets out requirements for transit through the United States of poultry carcasses, parts, or products that are otherwise ineligible for entry into the United States under part 94. Because these requirements would no longer apply to poultry carcasses, parts, or products from Campeche, Quintana Roo, and Yucatan, references to these States in § 94.15(c) would be removed.

##### Risk Evaluation

Using information submitted to us by the Federal Government of Mexico through the Secretariat for Agriculture, Livestock, Rural Development, Fisheries, and Food Safety (SAGARPA), as well as information gathered during a site visit by APHIS staff to the Yucatan Peninsula in March 2001, we have reviewed and analyzed the animal health status of these States relative to END. This review and analysis was

conducted in light of the factors identified in § 92.2, "Application for recognition of the animal health status of a region," which are used to evaluate the risk associated with importing animals or animal products into the United States from a given region. Based on the information submitted to us, we have concluded the following:

*Veterinary Infrastructure*

SAGARPA conducts sanitary and phytosanitary programs in conjunction with State and industry groups under a commission structure. Examples of programs under the authority of SAGARPA and of the Directorate for Animal Health (DGSA), which operates under SAGARPA, are animal disease control or eradication activities, including quarantine and movement restrictions; accreditation of professionals to perform program activities; disease reporting; emergency response; disease diagnosis; and animal depopulation. International seaport and airport border control for animal and plant and products is under the authority of SAGARPA and the Directorate for Phyto- and Zoosanitary Inspection (DGIF).

Each State has a Federal Delegate and other Federal personnel assigned to

conduct the Federal animal health activities in that State. Other personnel include an Assistant Delegate, as well as DGSA and DGIF personnel assigned to work in the State.

Each Federal delegate works with the State animal health officials to administer the joint Federal/State animal health programs. A peninsular animal health council, which is made up of the Federal regional coordinator, State animal health officials, and SAGARPA delegates, meets every few months to evaluate and determine the funding needs for the animal health activities of the region. For these programs, a significant joint budget is managed by the Federal, regional, and State officials.

Results of our evaluation indicate that animal health officials in Campeche, Quintana Roo, and Yucatan have the legal authority to enforce Federal and State regulations pertaining to END and the necessary veterinary infrastructure to carry out END surveillance and control activities. No specific factors were identified in the evaluation that might present a risk to the United States if poultry or poultry products were to be imported from these three Yucatan Peninsula States.

*Disease History and Surveillance*

The Government of Mexico recognized the State of Yucatan as free of END in July 1996. The last reported focus of infection was detected and eradicated in May 1984. Similarly, Quintana Roo was declared free in December of 1997, the last focus having been detected and eradicated in September 1990. Campeche, which has had no history of END, was officially recognized by the Mexican Government as free of the disease in December 1997.

Because the three Yucatan Peninsula States are considered to be free of END by Mexico, surveillance for animal disease must comply with the dictates of program manuals for END. In general terms, within free States, active and passive surveillance are performed every year.

*Active Surveillance.* Each year, a census is submitted to the DGSA's risk analysis and international reporting unit in Mexico City. That unit responds with instructions for the active surveillance to be performed in each State. Active surveillance data collected in 1999 and 2000 are shown below in tables 1 and 2.

TABLE 1.—SURVEILLANCE TESTING IN YUCATAN PENINSULA FOR NEWCASTLE DISEASE, 1999

State	Commercial flocks sampled	Samples per commercial flock	Backyard flocks sampled	Samples per backyard flock
Campeche .....	32	59	299	5
Quintana Roo .....	11	59	299	5
Yucatan .....	212	29	299	5

TABLE 2.—SURVEILLANCE TESTING IN YUCATAN PENINSULA FOR NEWCASTLE DISEASE, 2000

State	Commercial flocks sampled	Samples per commercial flock	Backyard flocks sampled	Samples per backyard flock
Campeche .....	*58	59	350	5
Quintana Roo .....	*20	36–69	348	5
Yucatan .....	*225	29	356	5

\*The discrepancy in the number of flocks compared to 1999 may be due to collections from separate houses on same farm.

Selection of flocks for testing is done in each State by program officials. All commercial flocks (*i.e.*, flocks set up for commerce, with appropriate fencing and biosecurity to isolate the unit) are sampled once a year. Birds are selected at random from within the selected flocks.

There is a special high-risk zone in Campeche, adjacent to the State of Tabasco, which is in the control phase for END; this zone consists of the area

within 50 km of the Tabasco border and is delineated by peninsular officials, not by the national program. Additional backyard poultry premises are tested annually from the high-risk zone, above the number of samples outlined by the national program. To test for END and salmonella in poultry, samples are collected from approximately 60 extra premises.

*Passive Surveillance.* Cases of concern are reported by and to various

personnel. Once a problem is reported to an official, the mandated response time is 24 hours. Quarantine of a premises is based on presumptive clinical signs, and appropriate samples must be collected. Officials may take more definitive action when they have certain presumptive results from the local laboratory. For END and other poultry diseases that occur in portions of Mexico, samples generally go to a regional laboratory. Positive samples are

sent to the national laboratories in Mexico City for confirmation. Table 3 below shows the numbers of passive

surveillance samples submitted to the Yucatan Peninsula's regional laboratory in Merida, Yucatan, for Newcastle

disease diagnosis during 2000. All samples were negative for END.

TABLE 3.—TOTAL NUMBERS OF SAMPLES RUN FOR NEWCASTLE DISEASE DIAGNOSIS (PROGRAM AND OTHER), 2000

State	Number of flocks represented	Number of samples
Campeche .....	470	3,003
Quintana Roo .....	387	4,457
Yucatan .....	598	15,053

Results of our evaluation indicate that authorities in the Yucatan Peninsula are conducting an adequate level of END surveillance to detect the disease if it were to be reintroduced into the peninsula.

#### *Diagnostic Capabilities*

There are two laboratories that provide veterinary diagnostic services to the poultry industry in the Yucatan Peninsula. One is a small regional laboratory located in Chetumal in the State of Quintana Roo, which provides general microbiological services to local producers but does not conduct diagnostic tests for program diseases. The second is a full-service regional laboratory located in Merida, Yucatan. The Merida laboratory also provides support for hazard analysis and critical control point (HACCP) programs for Federally inspected (TIF) processing plants in the region.

Tests for END are conducted using chick embryos from commercial sources. The plate hemagglutination test (HA) is used to test for the presence of the virus. Any samples that test positive at the Yucatan lab are sent to the central laboratories in Mexico City (CENASA) for confirmation, and tissues of any suspect animals are sent to the Exotic Animal Disease Commission (EADC) Laboratory in Mexico City for virus isolation.

The Yucatan Regional Laboratory in Merida meets the Office of International Epizootics' recommendations for equipment and training. An APHIS team visited the laboratory in 2001 and deemed the facilities and personnel adequate for the END surveillance program. The laboratory does not have an official quality assurance program in place; however, some monitoring of equipment is being performed.

APHIS concluded that the laboratory capabilities and infrastructure on the Yucatan Peninsula are sufficient to support the END surveillance activities.

#### *Vaccination Status*

Vaccination against Newcastle disease is currently being practiced on

commercial farms on the Yucatan Peninsula, as it is in all other Mexican States, in accordance with Mexican Federal regulations. APHIS concluded that vaccinated birds do not constitute a significant risk factor for introducing END into the United States.

#### *Disease Status of Adjacent Regions*

Yucatan is bordered to the west by Campeche, and by Quintana Roo to the east and south. Tabasco is the only Mexican State bordering the Yucatan Peninsula and shares the western border of the peninsula. The State of Campeche shares its southern border with Guatemala, and the State of Quintana Roo shares its southern border with both Guatemala and Belize.

The State of Tabasco is in the control phase for END. There were 3 foci of END infection in Tabasco in 2000, out of 50 in all of Mexico.

The United States considers the countries of Belize and Guatemala to be affected with END. Officials of the Regional International Organization for Agricultural Health informed APHIS that Belize has gone without reporting a case of END for several years, and that there are very few poultry in the Petén region of Guatemala bordering the Yucatan Peninsula. Cases are more likely to be reported in southern Guatemala. Guatemala apparently is entering into an eradication program for several poultry diseases, including END.

Although there are continuing END outbreaks in the adjacent Mexican State of Tabasco and the adjacent country of Guatemala, APHIS considers that the control point activities (described in the section "Movement Across Borders") in place between the Yucatan Peninsula States and their neighbors are sufficient to reduce substantially the risk from END. In addition, surveillance and eradication activity for diseases considered exotic is diligent and sufficient for rapid control of outbreaks of the type observed in the past.

#### *Degree of Separation from Adjacent Regions*

The State of Yucatan is northwest of Quintana Roo, and Campeche sits to the west, with Guatemala and Belize located south and southwest. The Gulf of Mexico lies to the north, the Caribbean to the east, and the Hondo River to the south, bordering Belize. Quintana Roo is separated from Guatemala by the Calakmul Biosphere Reserve, a natural rain forest protected by the Mexican government, and from Belize by the Hondo River. The border between Campeche and the State of Tabasco follows a river for a significant distance. In Campeche's southern part, bordering Guatemala, sits the Calakmul Biosphere Reserve.

The area of higher risk closest to the Yucatan Peninsula is the State of Tabasco, which, as indicated above, had three outbreaks of END in 2000. APHIS concluded that the peninsula had sufficient separation from areas with higher risk.

#### *Movement Across Borders*

There is a system of interstate and zonal agricultural and animal health checkpoints operating throughout Mexico. SAGARPA generally has overall authority for these activities. The Mexican National Agricultural Quarantine System represents the strategic base for the implementation of foreign and domestic quarantine services. These services focus on preventing the entry of exotic diseases and pests; assisting in the prevention and the control and eradication of such diseases, if they should occur; and supporting the phyto/zoosanitary campaigns at the national levels to maintain zones that are free of diseases and pests.

The primary means for preventing reintroduction of END into the Yucatan Peninsula is through regulations controlling the movement of land and air traffic. Movement of birds and bird products that enter the peninsula are subject to zoosanitary certificates issued by local organizations under SAGARPA's control.

The border checkpoints between Campeche and Tabasco provide 24-hour inspection and control. All roads that traverse the border between these two States are tightly monitored and controlled by officials from SAGARPA, peninsular governments, and law enforcement and military personnel from Campeche, Quintana Roo, and Yucatan, as well as from the State of Tabasco. Animal and plant products detected during vehicle searches are confiscated and incinerated. Movement of livestock and poultry between States is prohibited without proper movement authorization/documentation, and the unauthorized transport of live animals from Tabasco is strictly prohibited.

There are two international airports on the peninsula, one in Merida and one in Cancun. There are national airports in Campeche and Quintana Roo. The site visit team visited the international airport at Merida, Yucatan. Program officials inspect all incoming flights,

both passenger and cargo flights, for unpermitted agricultural products, including food wastes and stores.

The maritime port of Progreso primarily handles shipments of grain. Animals and animal products are allowed entry if the proper health certificate and permit requirements are met. There are four full-time inspectors at the port, including two veterinarians.

Officials on the Yucatan Peninsula have the authority, procedures, and infrastructure to enforce effectively the system of permits, inspection, quarantines, and treatments that the peninsula has in place to control animals and animal products. APHIS did not identify any specific limitations in the system that might pose a risk to the United States.

*Livestock Demographics and Marketing Practices*

In recent years, the Yucatan Peninsula has seen a significant growth in

production of poultry, swine, and cattle. In 2000, the State of Yucatan produced 82,099 metric tons of broilers, 76,530 metric tons of eggs, and 1,512 metric tons of turkey meat. The peninsula has evolved into an agriculture exporting region, supplying poultry products to other parts of Mexico, as well as to foreign markets. Disease control and surveillance programs are in place for poultry, swine, and cattle, as well as for bee pests. For poultry, control programs target END, avian influenza, and salmonella.

Site visit team members reviewed census information for poultry in the States on the Yucatan Peninsula. The population of chickens and proportion on commercial and backyard premises, based on the 2000 census, are shown in table 4.

TABLE 4.—POULTRY POPULATION AND PROPORTION ON COMMERCIAL FARMS, 2000 CENSUS

State	Commercial farms			Backyard farms		
	Number of farms	Number of poultry	Percentage of total birds	Number of farms	Number of poultry	Percentage of total birds
Campeche .....	30	1,243,181	82.1	21,595	271,500	17.9
Quintana Roo .....	2	2,139,706	92	25,639	185,212	8
Yucatan .....	226	*13,000,000	92	58,501	1,132,828	8

\* = 1999 figures.

About 60 percent of the peninsula's poultry production is for regions outside the peninsula. Most of the birds and poultry products that come into Quintana Roo and Campeche originate in the State of Yucatan. A site visit was made to the third largest broiler-producing company in the Yucatan, located near Merida. This was a first-class operation that would rival the best production facilities in the United States. However, it appeared that many other operations consisted of two to six house units with passive air systems and chicken houses often located close to heavily traveled roads. Most houses appeared to be 15 or more years of age.

For both economic and health reasons, the poultry industry on the Yucatan Peninsula is committed to the production of quality products and the maintenance of END-free status. Industry leaders demonstrated an awareness of animal disease control measures needed to maintain a healthy and productive animal industry. Industry groups contribute funds to develop and improve sanitary operations to maintain the END-free status of their respective States.

APHIS did not identify any factors in this category that might pose a risk to the United States if poultry or poultry products were to be imported from the Yucatan Peninsula.

*Detection and Eradication of Disease*

END has been effectively controlled and eradicated from Quintana Roo and Yucatan, and has no known history in Campeche. Accordingly, END is now considered an exotic disease on the Yucatan Peninsula. Therefore, while there are no active disease control programs, the States do maintain both active and passive disease surveillance, ongoing animal movement controls, and an emergency response system in case END is again detected in the Yucatan Peninsula States. According to Mexican regulations, in the event of any cases of END in a free zone, a sanitary slaughter policy would be implemented, along with cleaning and disinfection of affected premises. APHIS did not identify specific limitations in this system that would pose a risk to the United States.

Results of our evaluation indicate that the Federal Government of Mexico and the State Governments of Campeche,

Quintana Roo, and Yucatan have the laws, policies, and infrastructure to detect, respond to, and eliminate any reoccurrence of END.

These findings are described in further detail in a qualitative evaluation that may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** and may be viewed on the Internet at <http://www.aphis.usda.gov/vs/reg-request.html> by following the link for current requests and supporting documentation. The evaluation documents the factors that have led us to conclude that Campeche, Quintana Roo, and Yucatan are free of END. Therefore, we are proposing to recognize the Mexican States of Campeche, Quintana Roo, and Yucatan as free of END; add them to the list in § 94.6 of regions where END is not known to exist; and amend § 94.15 to remove restrictions on the movement of poultry carcasses, parts, or products from these States that would no longer apply.

**Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The rule

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

This proposed rule would amend the regulations by adding the Mexican States of Campeche, Quintana Roo, and Yucatan to the list of regions considered free of END and removing END-related restrictions on the movement of poultry carcasses, parts, or products from these

States into the United States that would no longer apply.

A number of factors could influence how much of the poultry produced in the Yucatan Peninsula might be exported to the United States as a result of this proposed rule. These factors include domestic and international supply of, and demand for, poultry and poultry substitutes, U.S. grain prices, exchange rates, freight rates, the structure (number of large integrated operations versus the number of

traditional and semi-traditional operations) of the poultry industry in the Yucatan Peninsula, and the ability of Yucatan producers/packers consistently to ship cuts that meet U.S. market specifications.

As shown in table 5, Yucatan Peninsula poultry production peaked at roughly 100,000 metric tons (MTs) in 1997 and consistently accounted for about 8 percent of Mexico's total poultry production from 1992 until 1999, the last year for which data were available.

TABLE 5.—YUCATAN POULTRY PRODUCTION BY STATE 1992–1999 (MTs)

Year	1992	1993	1994	1995	1996	1997	1998	1999
Campeche .....	4,152	5,821	6,322	6,438	6,679	7,440	6,604	6,784
Quintana Roo .....	5,124	5,940	5,810	7,043	5,490	5,865	4,685	5,374
Yucatan .....	63,027	74,311	77,841	83,311	86,485	89,698	79,900	81,470
Total .....	72,303	86,072	89,884	96,792	98,654	103,003	91,189	93,628
Percentage of Mexico's production .....	8.05	8.28	7.98	7.54	7.80			

Source: Centro de Estadística Agropecuaria/SAGARPA.

Our analysis of poultry production in the Yucatan Peninsula suggests 100,000 MTs as the upper limit for poultry and poultry products that could be made available for export to the United States at this time. The Yucatan Peninsula is a grain and oilseed deficit area. Most of the grains and oilseeds used in poultry production (the single largest and most expensive input in poultry production) are imported from the United States. This dependence on imported grains and oilseeds will tend to limit the growth of the Yucatan Peninsula's poultry production and, consequently, the amount of poultry and poultry products available for export to the United States.

It is far more likely that the actual amount of poultry and poultry products that would be exported to the United States from the Yucatan Peninsula States in the near term as a result of this rulemaking would be significantly less than 100,000 MTs. A general analysis of Mexican poultry production systems suggests that a maximum of 60 to 70 percent of Yucatan Peninsula poultry production might meet U.S. import standards.<sup>1</sup> According to Foreign Agricultural Service attaché reports and Economic Research Service (ERS) analysts, most Yucatan Peninsula production would probably be consumed locally or diverted to the local tourist industry. Because of

shipping costs, it is likely that Mexican producers would only find it profitable to ship breast cuts to the United States. Table 6 shows high and low estimates for possible exports of poultry and poultry products from the Yucatan Peninsula to the United States. As shown in the table, between 18,000 and 52,500 MTs of Yucatan Peninsula poultry could be available for export to the United States, depending on domestic consumption, a factor that is very difficult to gauge or predict. Based on these figures, the amount of breast meat cuts available for export to the United States could range from roughly 5,786 to 16,875 MTs.<sup>2</sup>

TABLE 6.—ESTIMATED YUCATAN PENINSULA POULTRY AND POULTRY PRODUCTS AVAILABLE FOR EXPORT TO THE UNITED STATES (IN MTs)

Potential exports	High estimate	Low estimate
Total .....	100,000	100,000
Acceptable for U.S. import .....	70,000	60,000
Acceptable for U.S. import and available for export (not consumed domestically) .....	52,500	18,000
Estimated breast meat available for export to U.S. ....	16,875	5,786

Source: Centro de Estadística Agropecuaria/SAGARPA statistics provided by Leland Southard of USDA/ERS.

These amounts would make up a minuscule share of the U.S. market. The United States is the world's largest producer and exporter of poultry meat. In 1999, U.S. poultry meat production totaled 35.3 billion pounds (159,090,909 MTs), of which 83 percent was broiler

meat, 15 percent was turkey meat, and 2 percent was other chicken meat. The total farm value of U.S. poultry production in 1999 was \$22.4 billion. Broiler production accounted for the majority of the value at \$15.1 billion, followed by eggs at \$4.3 billion, turkey

at \$2.8 billion, and other chicken at \$68 million. The high estimate of 52,500 MTs of Yucatan Peninsula poultry and poultry parts available for export to the United States would translate to 0.033 percent of U.S. poultry production based on the 1999 figures. The low

<sup>1</sup>“Outlook for Mexican Poultry Industry and U.S.-Mexican Poultry Trade,” by Milton Madison

and David Harvey. USDA/ERS Livestock, Dairy, and Poultry Report, July 17, 1998, LDP-52.

<sup>2</sup> A 42-ounce processed broiler carcass is comprised of 12.5 to 14 ounces of breast meat, or roughly 32 percent breast meat.

estimate of 18,000 MTs available for export would equal 0.0113 percent of 1999 U.S. production. The percentages for estimated breast meat exports would, of course, be even smaller.

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their rules on small entities. Among the small entities that could be affected by this proposed rule are U.S. producers of

poultry and poultry products, U.S. freight forwarders, and U.S. trucking and shipping firms. All of these categories are comprised primarily of small entities. Table 7 provides a breakdown.

TABLE 7.—NUMBER AND TYPE OF SMALL BUSINESSES POTENTIALLY AFFECTED BY PROPOSED RULE

Type of business	Total U.S. entities	Small entities
Local and long distance U.S. trucking firms (refrigerated) .....	13,815	13,529
U.S. freight forwarders .....	5,771	5,674
Deep sea freight transport .....	431	273
Poultry farms .....	63,246	53,530

The U.S. poultry industry is dominated by contract growing arrangements. A small number of very large, vertically integrated poultry companies own most poultry in the United States. The poultry are raised to a marketable size by farmers under contract arrangements. The vertically integrated companies do not qualify as small entities under the Small Business Administration's standard for small poultry enterprises—no more than \$750,000 in annual revenues. Most contract poultry growers do qualify as small entities, however.<sup>3</sup> The 1997 Census of Agriculture (the most recent data on the composition of poultry industry by size) reported a total of 63,246 farms in the United States that raised poultry or poultry products, producing poultry and poultry products valued at over \$22 billion. According to Census of Agriculture data, approximately 53,530 or 85 percent of the farms raising poultry were “small” farms in 1997.<sup>4</sup>

In theory, imported Yucatan poultry would increase the available supply of poultry in the United States, increase competition, and reduce prices. Such a development, while benefitting U.S. consumers, could negatively affect net revenues of U.S. producers. Due to the relatively small tonnage of poultry and poultry products expected to be exported from the Yucatan Peninsula to the United States, however, this proposed rule would be unlikely to have a measurable effect on U.S. poultry and poultry-product supplies, poultry prices, or poultry producer revenues.

The other affected small entities—U.S. freight forwarding, trucking, or transport firms that could transport Mexican poultry from U.S. land border ports or U.S. maritime ports—could

benefit from increased economic activity as a result of this proposed rule. As is the case with poultry producers, however, these effects are likely to be very small due to the limited amount of poultry and poultry products that would be exported to the United States from the Yucatan Peninsula.

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

**Executive Order 12988**

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

**Paperwork Reduction Act**

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

**List of Subjects in 9 CFR Part 94**

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

Accordingly, we propose to amend 9 CFR part 94 as follows:

**PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS**

1. The authority citation for part 94 would continue to read as follows:

**Authority:** 7 U.S.C. 450, 7711–7714, 7751, 7754, 8303, 8306, 8308, 8310, 8311, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

**§ 94.6 [Amended]**

2. In § 94.6, paragraph (a)(2) would be amended by adding the words “Mexico (States of Campeche, Quintana Roo, and Yucatan),” after the word “Luxembourg.”

3. In § 94.15, the introductory text of paragraph (c) and paragraph (c)(2) would be revised to read as follows:

**§ 94.15 Animal products and materials; movement and handling.**

\* \* \* \* \*

(c) Poultry carcasses, parts, or products (except eggs and egg products) from Baja California, Baja California Sur, Chihuahua, Nuevo Leon, Sinaloa, Sonora, or Tamaulipas, Mexico, that are not eligible for entry into the United States in accordance with the regulations in this part may transit the United States via land ports for immediate export if the following conditions are met:

\* \* \* \* \*

(2) The poultry carcasses, parts, or products are packaged at a Tipo Inspección Federal plant in Baja California, Baja California Sur, Chihuahua, Nuevo Leon, Sinaloa, Sonora, or Tamaulipas, Mexico, in leakproof containers with serially numbered seals of the Government of Mexico, and the containers remain sealed during the entire time they are in

<sup>3</sup> <http://www.sba.gov>, NAICS Code 112320, poultry production.

<sup>4</sup> 1997 Census of Agriculture—United States data, table 50, summary by market value of agricultural products sold.

transit across Mexico and the United States.

\* \* \* \* \*

Done in Washington, DC, this 16th day of October 2002 .

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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## FARM CREDIT ADMINISTRATION

### 12 CFR Part 615

RIN 3052-AC05

#### Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy

**AGENCY:** Farm Credit Administration (FCA).

**ACTION:** Proposed rule.

**SUMMARY:** The FCA proposes to amend its capital adequacy regulations to add a definition of total liabilities for the net collateral ratio calculation; limit the amount of term preferred stock that may count as total surplus; clarify the circumstances in which we may waive disclosure requirements for an issuance of equities by a Farm Credit System (FCS, Farm Credit or System) institution; and make several nonsubstantive technical changes. These amendments will update, modify, and clarify certain capital requirements.

**DATES:** Please send your comments to us by November 21, 2002.

**ADDRESSES:** You may send comments by electronic mail to [reg-comm@fca.gov](mailto:reg-comm@fca.gov) or through the Pending Regulations section of FCA's Web site, <http://www.fca.gov>. You may also send comments to Thomas G. McKenzie, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 or by fax to (703) 734-5784. You may review copies of all comments we receive in the Office of Policy and Analysis, FCA.

**FOR FURTHER INFORMATION CONTACT:** Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4479; TTY (703) 883-4434; or Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-2020.

#### SUPPLEMENTARY INFORMATION:

##### I. Objectives

The objectives of our proposal are to:

- Limit the effect of Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities* (SFAS 133), on the net collateral ratio;
- Ensure that Farm Credit institutions do not overly rely on term preferred stock to meet regulatory capital requirements;
- Explain how the FCA may include other debt or equity in the definition of permanent capital;
- Clarify the requirements for the FCA to consider waiving disclosure requirements for issuances of stock to more than a single sophisticated investor; and
- Make several nonsubstantive technical changes to our capital regulations.

##### II. Introduction

The FCA is proposing changes to the capital adequacy regulations in order to update, modify, and clarify certain requirements. We propose revising the net collateral ratio calculation to limit the effect of new accounting rules for derivatives. This is in response to a petition we received last year from two System banks. We also propose limiting the amount of term preferred stock that can be counted in total surplus.

Additionally, we propose excluding term preferred stock from liabilities in the calculation of the net collateral ratio for System banks to the extent that the stock is counted as total surplus. This latter proposed amendment reflects the capital treatment of term preferred stock issuances we recently reviewed for two System banks. As a result of our review of those recent stock issuances, we also identified a need to clarify certain requirements and make additional technical corrections. The proposed amendments are more fully described in the section-by-section analysis below.

##### III. Section-by-Section Analysis

###### *Section 615.5201(e)—Definition of Direct Lender Institution*

We propose amending § 615.5201(e) by removing the phrase "loan of lease" and adding, in its place, the phrase "loan or lease" to correct a typographical error.

###### *Section 615.5201(l)—Definition of Permanent Capital*

We propose adding a new paragraph (8) to the definition of permanent capital in § 615.5201(l). This proposed amendment reflects a statutory change to section 4.3A of the Farm Credit Act of 1971, as amended, by the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act). The

1992 Act added section 4.3A(a)(1)(E), which includes in permanent capital any debt or equity instrument or other account that the FCA determines appropriate to be considered as permanent capital. The proposed amendment states that we may include a debt or equity instrument in permanent capital in whole or in part, and on a permanent or temporary basis. The language of this proposal is similar to language in existing § 615.5301(b)(1)(iv) and (i)(5), which states that we may include additional items in core or total surplus when we deem their inclusion to be appropriate. The inclusion of additional items would give institutions more flexibility in meeting their capital requirements.

We considered proposing that term subordinated debt could be counted as permanent capital in much the same way that we currently allow term preferred stock to be counted. However, since no System institution has issued subordinated debt, we have decided to consider the inclusion of subordinated debt in permanent capital on a case-by-case basis, should we receive a specific proposal by a System institution.

###### *Section 615.5250(c)(5)—Waiver of Disclosure Requirements*

We propose amending § 615.5250(c)(5) to clarify the circumstances in which we may waive any or all of the disclosures we require institutions to make to potential investors in stock issuances. The existing waiver language has been interpreted by some institutions to apply only when a single investor acquires all the equities of an entire class issued by an institution. Our revision clarifies that we may waive disclosure requirements when the following conditions are met: (1) Equities are sold only to sophisticated investors; (2) equities are sold in blocks of \$100,000 or more; and (3) purchasers of equities agree that any subsequent sale or transfer must be in blocks of \$100,000 or more. Any subsequent sale or transfer of equities that is less than \$100,000 must receive our prior written approval.

We also propose to correct the reference to paragraph (b) in existing paragraph (c)(5). The reference should be to the disclosure requirements in paragraph (c)(1).

###### *Section 615.5301(i)—Definition of Total Surplus*

We propose to add a new paragraph (4) to the definition of total surplus in § 615.5301(i) to limit the amount of term preferred stock that may be included in total surplus to 25 percent of permanent