

disease in this subchapter D experiences an outbreak of that disease, APHIS will take immediate action to prohibit or restrict imports of animals and animal products from that region. Such action may include publishing an interim rule that imposes prohibitions or restrictions that may be announced initially administratively. The interim rule may be given an effective date earlier than the date of signature or publication to affirm our authority for issuing previous administrative orders. The interim rule may impose prohibitions or restrictions on only a portion of the region previously recognized as free of a disease. In these cases, APHIS will provide information to the public as soon as possible regarding the basis for its decision to prohibit or restrict imports from the smaller area of that region previously recognized as free.

(b) *Reassessment of the disease situation.* (1) Following publication of an interim rule as described in paragraph (a) of this section, APHIS will reassess the disease situation in that region to determine whether it is necessary to continue the interim prohibitions or restrictions. In reassessing a region's disease status, APHIS will take into consideration the standards of the Office International des Epizooties for reinstatement of disease-free status, as well as all relevant information obtained through public comments on both the initial interim rule and the notice of availability of the reassessment or relevant information collected by or submitted to APHIS through other means.

(2) Prior to taking any action to relieve or finalize prohibitions or restrictions imposed by the interim rule, APHIS will make information regarding its reassessment of the region's disease status available to the public for comment. APHIS will announce the availability of this information by publishing a notice in the **Federal Register**.

(c) *Determination.* Based on the reassessment conducted in accordance with paragraph (b) of this section, including comments regarding the reassessment information, APHIS will take one of the following actions:

(1) Publish a final rule that reinstates the disease-free status of the region, or a portion of the region, covered by the interim rule;

(2) Publish an affirmation of the interim rule that imposed prohibitions or restrictions on the imports of animals and animal products from that region; or

(3) Publish another document in the **Federal Register** for comment.

Done in Washington, DC, this 4th day of May 2004.

**Peter Fernandez,**

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

[FR Doc. 04-10523 Filed 5-7-04; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

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

[Docket No. 04-011-1]

#### Highly Pathogenic Avian Influenza; Additional Restrictions

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

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

**SUMMARY:** We are amending the regulations concerning the importation of animals and animal products to prohibit or restrict the importation of birds, poultry, and unprocessed bird and poultry products from regions that have reported the presence of the H5N1 subtype of highly pathogenic avian influenza and to establish additional permit and quarantine requirements for U.S. origin pet birds and performing or theatrical birds and poultry returning to the United States. This action is necessary to prevent the introduction of highly pathogenic avian influenza subtype H5N1 into the United States.

**DATES:** This interim rule was effective February 4, 2004. We will consider all comments that we receive on or before July 9, 2004.

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

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04-011-1, 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. 04-011-1.

- 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. 04-011-1" on the subject line.

- Agency Web site: Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to submit an e-mail comment through the APHIS Web site.

Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

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

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

**FOR FURTHER INFORMATION CONTACT:** For information concerning bird and poultry products, contact Dr. Tracye Butler, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737-1231; (301) 734-3277.

For information concerning live birds and poultry, contact Dr. Julie Garnier, Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231; (301) 734-8364.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA or the Department) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases. The regulations in 9 CFR parts 93, 94, and 95 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including avian influenza (AI).

There are many strains of AI virus that can cause varying degrees of clinical illness in poultry. AI viruses can infect chickens, turkeys, pheasants, quail, ducks, geese, and guinea fowl, as well as a wide variety of other birds. Migratory waterfowl have proved to be the natural reservoir for this disease.

AI viruses can be classified into low pathogenic (LPAI) and highly pathogenic (HPAI) forms based on the

severity of the illness they cause. Most AI virus strains are LPAI and typically cause little or no clinical signs in infected birds. However, some LPAI virus strains are capable of mutating under field conditions into HPAI viruses.

HPAI is an extremely infectious and fatal form of the disease for chickens. HPAI can strike poultry quickly without any infection warning signs and, once established, the disease can spread rapidly from flock to flock. HPAI viruses can also be spread by manure, equipment, vehicles, egg flats, crates, and people whose clothing or shoes have come in contact with the virus. HPAI viruses can remain viable at moderate temperatures for long periods in the environment and can survive indefinitely in frozen material. One gram of contaminated manure can contain enough virus to infect 1 million birds.

In some instances, strains of HPAI viruses can be infectious to people. Human infections with AI viruses under natural conditions have been documented in recent years. Since December 2003, a growing number of Southeast Asian countries have reported outbreaks of HPAI responsible for the deaths of millions of birds and at least 22 humans.

The rapid spread of HPAI, with outbreaks occurring at the same time in a number of regions, is historically unprecedented and of growing concern for human and animal health. According to the World Health Organization, particularly alarming is the HPAI strain of most of these outbreaks, H5N1, which has crossed the species barrier and caused severe disease, with high mortality, in humans. The current avian flu outbreaks have caused significant concern among health authorities worldwide because of the potential for the human and avian flu viruses to swap genes, creating a new virus to which humans would have little or no immunity.

The regulations in § 94.6 restrict the importation of carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from regions where exotic Newcastle disease (END) exists. These regulations have thus far been effective in preventing the introduction of HPAI in the United States because all regions experiencing outbreaks of HPAI are also regions where END exists. However, because of the increasing threat of introducing HPAI into the United States, we have determined that stronger safeguards are needed. These additional safeguards will apply to all unprocessed bird and poultry carcasses,

parts, and products from regions where HPAI subtype H5N1 is considered to exist, as well as to U.S. origin pet birds and performing or theatrical birds and poultry returning to the United States.

#### **Pet Birds of U.S. Origin**

The current regulations in § 93.101 call for a 30-day home quarantine for all U.S. origin pet birds returning to the United States after spending more than 60 days in another region and a veterinary inspection at the port of entry for such birds returning to the United States after spending not more than 60 days in another country. We are amending the regulations to require all pet birds of U.S. origin that have spent any length of time in a region reporting incidents of HPAI subtype H5N1 to undergo a 30-day quarantine at a USDA facility.

In addition, we are requiring that all U.S. origin pet birds returning from any region, except for such birds returning from Canada and Mexico through a land border port, be accompanied by an import permit issued by APHIS. We are not requiring an import permit for U.S. origin pet birds returning to the United States from Canada or Mexico through a land border port because those birds are subject to an examination by an APHIS veterinarian at the border prior to entry; pet birds returning to the United States through an airport are not examined until they have already entered the country. This import permit will ensure that U.S. origin pet birds undergo appropriate examinations, including being swabbed for HPAI and END, before entering the United States. We believe these measures will mitigate the risk of introducing HPAI subtype H5N1 into the United States.

#### **Performing and Theatrical Birds and Poultry of U.S. Origin**

Currently, the regulations in part 93 do not require U.S. origin performing and theatrical birds and poultry to have an import permit or undergo a quarantine when returning to the United States from another region. For the same reasons discussed above with respect to pet birds, we are amending the regulations in §§ 93.101 and 93.201 to require U.S. origin performing or theatrical birds or poultry returning from any region, except for such birds or poultry returning from Canada or Mexico through a land border port, to be accompanied by an import permit. We are also adding requirements that U.S. origin performing and theatrical poultry returning from regions where HPAI subtype H5N1 exists undergo a 30-day quarantine at a USDA facility. U.S. origin performing or theatrical birds or

poultry returning from all other regions, except Canada or Mexico, must undergo a 30-day home quarantine.

#### **Unprocessed Bird and Poultry Carcasses, Parts, and Products**

Section 94.6 of the regulations contains provisions for the importation of unprocessed bird and poultry carcasses, parts, and products into the United States from regions where END exists. As noted previously, our regulations in § 94.6 have been effective at preventing the introduction of HPAI in the United States because the regions from which bird and poultry parts and products are experiencing outbreaks of HPAI subtype H5N1 are all regions restricted because of END. Given the concerns described above, we believe it is necessary to establish regulations in part 94 that specifically address HPAI subtype H5N1. Therefore, we are amending the regulations to restrict the importation of unprocessed bird and poultry carcasses, parts, and products from regions where HPAI subtype H5N1 is considered to exist.

These new restrictions, which we are adding as a new § 94.6(e), provide that bird and poultry carcasses, parts, and products, may be imported from a region where HPAI subtype H5N1 exists only if accompanied by an import permit, and only if they are research or educational materials destined for a museum, educational institution, or research institution. These types of imports are generally in smaller quantities and are destined for controlled environments, thus they pose a lower risk of introducing HPAI subtype H5N1 in the United States. We have also added, as a new § 94.6(d), a list of regions (Cambodia, China, Indonesia, Japan, Laos, South Korea, Thailand, and Vietnam) where HPAI subtype H5N1 is considered to exist.

The regulations in part 95, in their present form, do not explicitly set out restrictions on imports into the United States of feathers, birds' nests, and bird trophies from regions with avian diseases like END and HPAI. We have allowed the entry of these articles, however, if, among other requirements, the articles are sent directly to an establishment approved by APHIS for the receipt and handling of restricted imported animal byproducts. We believe it is now necessary to explicitly restrict the entry of these types of products into the United States when they pose a risk of introducing HPAI subtype H5N1. Therefore, we are adding a new § 95.30 "Restrictions on entry of products and byproducts of poultry, game birds, or other birds from regions where highly pathogenic avian

influenza subtype H5N1 exists.” This section provides that products and byproducts of birds and poultry, including feathers, birds’ nests, and bird trophies from a region where HPAI subtype H5N1 exists may be imported only if the Administrator has determined that the importation can be made under conditions that will prevent the introduction of HPAI subtype H5N1 into the United States. The articles must be accompanied by a permit obtained from APHIS prior to their importation and must be moved and handled as specified on the permit.

These measures are considered necessary because of the present risk of HPAI subtype H5N1 introduction into the United States, but are not necessarily intended to be permanent. The restrictions and prohibitions described in this interim rule will be reviewed as more information on the situation in Southeast Asia becomes available. At a time when the Administrator deems that the affected regions have implemented proper procedures to control the spread of the disease and no longer pose a disease threat, we will reconsider the need for these restrictions.

#### Emergency Action

Emergency action is necessary to prevent the introduction of HPAI subtype H5N1 into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

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

#### Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the regulations to prohibit or restrict the importation of unprocessed bird, poultry, and bird and poultry products from regions that have reported the presence of HPAI subtype H5N1 and to establish procedures for issuing permits and quarantining U.S.

origin pet birds and performing or theatrical birds and poultry returning to the United States from these regions. This action is in response to recent numerous outbreaks of the disease in Southeast Asia. This action is necessary to prevent the introduction of HPAI subtype H5N1 into the United States.

Eight South and Southeast Asian countries have reported outbreaks of HPAI subtype H5N1. HPAI subtype H5N1 is of particular importance due to the threat posed to humans. However, the introduction of any strain of HPAI causes immediate and devastating losses to the poultry industry. During the 1983–84 HPAI subtype H2N2 outbreak in the United States, more than 17 million birds were destroyed, at a cost of nearly \$65 million to the U.S. poultry industry. To understand the importance of restricting poultry imports, and thereby the necessity of protecting against introduction of H5N1 into the United States, we must consider the value of the poultry industry. Also, we will consider the potential impact to small entities in the case of H5N1 introduction.

U.S. import restrictions have limited imports of live poultry and poultry meat from the regions affected by this interim rule due to the presence of END in those regions. As a result, there have been no imports of these commodities from those regions in recent years during that time; therefore, there will be no discernable effect on domestic prices of poultry products due to this interim rule. The United States received no imports of unprocessed carcasses of poultry or poultry meat from the affected regions in 2002, and feathers account for the most valuable avian imports from these regions. Whereas the regulations have previously provided for the importation from regions affected with END of unprocessed carcasses and products of birds or poultry under certain conditions, this interim rule severely restricts these types of imports due to HPAI subtype H5N1.

Unprocessed down feathers have been the primary commercially traded import from regions that have reported the presence of HPAI subtype H5N1. In 2003, 127.2 metric tons of feathers were imported from the affected regions, with a cash value of \$499,000.<sup>1</sup>

According to the Small Business Association (SBA), domestic companies engaging in feathers wholesaling come under the NAICS code 422590. SBA defines a small feather wholesaling entity as one that employs no more than

100 persons.<sup>2</sup> It is unclear at this time exactly how many feather wholesalers classified as small entities would be affected by this interim rule. However, according to 1997 Census data, there were 1,684 establishments with sales of more than \$22 billion.<sup>3</sup> While the number of small entities in the feather wholesaling industry affected by this rule is uncertain, we think it unlikely that this interim rule will pose a significant impact to a substantial number of small businesses.

Other unprocessed poultry products of interest are bird nests and bird trophies. Unfortunately, as these are not commercially traded products, statistics regarding the number and value of these imports into the United States are unavailable. In any case, we do not believe the cost of restricting these imports will outweigh the benefit of preventing disease introduction.

To get an idea of the expected benefits of this interim rule, we must consider the domestic losses that could result in the introduction of HPAI subtype H5N1. The U.S. poultry industry is largely a vertically integrated industry with the majority of producers working under contract and producing poultry for a few big corporations. These entities would capture the benefits resulting from the prevention of an HPAI subtype H5N1 outbreak.

The United States is the world’s largest producer of poultry meat and the second-largest egg producer behind China. Preliminary reports for the year 2002 indicate there were a total of 438.9 million chickens, excluding commercial broilers, with a cash value of \$1.045 billion. In 2001, broiler production, raised for the purpose of meat production, totaled 8.389 billion broilers, with a combined live weight of more than 42.4 billion pounds. The value of broiler production for that year was more than \$16.6 billion. In 2001, 85.7 billion eggs were produced with a cash value of \$4.4 billion.<sup>4</sup> The United States is also the world’s largest turkey producer. In 2001, turkey production totaled more than 272 million birds with a combined live weight of 7.154 billion pounds and a cash value of almost \$2.8 billion.<sup>5</sup> Considering the

<sup>2</sup> Table of Size Standards based on NAICS 2003. Washington, DC: U.S. Small Business Administration, 2003.

<sup>3</sup> 1997 *Economic Census: NAISC 422590*. Washington, DC: U.S. Census Bureau. (This is the most current published data available).

<sup>4</sup> USDA, *Agricultural Statistics 2003*. Washington, DC: National Agricultural Statistics Service, 2003. Estimates cover the 12-month period December 1 of the previous year through November 30.

<sup>5</sup> USDA, *Agricultural Statistics 2003*. Washington, DC: National Agricultural Statistics Service, 2003. Estimates based on turkeys placed September 1,

<sup>1</sup> USDA, *U.S. Trade Imports—HS 6-Digit Codes*. Washington, DC: Foreign Agricultural Service, 2004.

value and volume of production, a possible introduction of HPAI subtype H5N1 would result in a devastating blow to the U.S. poultry industry.

Prompted by outbreaks of HPAI subtype H5N1 that have been responsible for the deaths of millions of birds and at least 22 humans in South and Southeast Asia, this interim rule will severely restrict imports of unprocessed poultry and poultry products from regions reporting incidents of HPAI subtype H5N1. As a result of complying with END restrictions, there have been no imports of live poultry, poultry meat, or eggs from these regions in the past 4 years. The only commercially traded import that will be primarily affected by this interim rule, assuming no further spread of the disease to regions outside South Asia, is unprocessed down feathers. The benefits resulting from avoided HPAI subtype H5N1 introduction into the United States as a result of this interim rule far outweigh any costs imposed. In addition, we do not expect any resulting costs experienced by small entities to be significant.

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

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to February 4, 2004; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579-0245 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC

20503; and (2) Docket No. 04-011-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 04-011-1 and send your comments within 60 days of publication of this rule.

We are amending the regulations concerning the importation of animals and animal products to prohibit or restrict the importation of birds, poultry, and unprocessed bird and poultry products from regions that have reported the presence of HPAI subtype H5N1 and to establish additional permit and quarantine requirements for U.S. origin pet birds and performing or theatrical birds and poultry returning to the United States. This action is necessary to prevent the introduction of HPAI subtype H5N1 into the United States.

Implementing these additional import requirements will necessitate the use of several information collection activities, including an Application to Import Controlled Materials or Transport Organisms and Vectors (VS Form 16-3), an Application for Import or In-Transit Permit (VS Form 17-129), a notarized declaration or affirmation, and a Pet Bird Owner Agreement (VS Form 17-8).

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

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

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

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

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

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

*Respondents:* Owners of U.S. origin pet birds and U.S. origin performing or theatrical birds or poultry returning to the United States, and U.S. importers of bird and poultry carcasses, parts, products, and byproducts of birds and

poultry (including feathers, birds' nests, and bird trophies) from certain regions.

*Estimated annual number of respondents:* 5,000.

*Estimated annual number of responses per respondent:* 2.

*Estimated annual number of responses:* 10,000.

*Estimated total annual burden on respondents:* 5,000 hours.

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

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

#### Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### List of Subjects

##### 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

##### 9 CFR Part 94

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

##### 9 CFR Part 95

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

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

#### **PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS**

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.101 [Amended]

- 2. Section 93.101 is amended as follows:
- a. Paragraph (c)(2) is revised to read as set forth below and the undesignated paragraph following paragraph (c)(2) is removed.
- c. Paragraph (c)(3) is redesignated as paragraph (c)(4) and a new paragraph (c)(3) is added to read as set forth below.
- d. Paragraph (f) is revised to read as set forth below.
- e. By revising the OMB control number citation at the end of the section to read as follows: “(Approved by the Office of Management and Budget under control numbers 0579-0220 and 0579-0245)”.

§ 93.101 General prohibitions; exceptions.

\* \* \* \* \*

(c) \* \* \*

(2)(i) Except for pet birds that have been in any region where highly pathogenic avian influenza subtype H5N1 exists, which are subject to the provisions of paragraph (c)(3) of this section, pet birds of United States origin that have not been outside the country for more than 60 days may be offered for entry under the provisions of paragraph (c)(1) of this section if:

(A) The pet birds are accompanied by an import permit issued by APHIS; *Provided*, that an import permit will not be required for pet birds returning from Canada or Mexico through a land border port; and

(B) The birds are also accompanied by a United States veterinary health certificate issued prior to the departure of the birds from the United States and the certificate shows the number from the leg band, tattoo, or microchip affixed to the birds prior to departure; and

(C) During port of entry veterinary inspection it is determined that the number from the leg band, tattoo, or microchip on the bird is the same as the one listed on the health certificate.

(ii) Except for pet birds that have been in any region where highly pathogenic avian influenza subtype H5N1 exists, which are subject to the provisions of paragraph (c)(3) of this section, pet birds of United States origin that have been outside the country for more than 60 days may be imported by their owner if:

(A) The pet birds are accompanied by an import permit issued by APHIS; *Provided*, that an import permit will not be required for pet birds returning from Canada or Mexico through a land border port; and

(B) The pet birds are found upon port of entry veterinary inspection to be free of poultry diseases; and

(C) The pet birds are accompanied by a United States veterinary health certificate issued prior to the departure of the birds from the United States and the certificate shows the number from the leg band, tattoo, or microchip affixed to the birds prior to departure; and

(D) During port of entry veterinary inspection it is determined that the number from the leg band, tattoo, or microchip on the bird is the same as the one listed on the health certificate; and

(E) The owner importing the pet birds signs and furnishes to the Administrator the following:

(1) A notarized declaration under oath or affirmation (or a statement signed by the owner and witnessed by a Department inspector) stating that the bird or birds have not been in contact with poultry or other birds while out of the region (for example, association with other avian species at exhibitions or at aviaries); and

(2) An agreement on VS Form 17-8, obtainable from a Federal inspector at the port of entry, stating:

(i) That the birds will be maintained in confinement in his or her personal possession separate and apart from all poultry and other birds for a minimum of 30 days following importation at the address where the birds are to be held and made available for health inspection and testing by Department inspectors upon request until released at the end of such period by such an inspector; and

(ii) That appropriate Federal officials in the State of destination will be immediately notified if any signs of disease are noted in any of the birds or any bird dies during that period. The owner importing such birds must comply with the provisions of the aforementioned agreement before the birds may be released from confinement. Except for pet birds that have been in any region where highly pathogenic avian influenza subtype H5N1 exists, lots of pet birds of United States origin which do not otherwise meet the requirements of paragraphs (c)(1) or (2) of this section may be offered for entry under the provisions of paragraph (c)(4) of this section.

(3) Any pet birds of United States origin that have been in any region listed in § 94.6(d) of this subchapter as a region where highly pathogenic avian influenza subtype H5N1 exists, regardless of the length of time such birds have been outside of the United States, may only be imported through the port of Los Angeles, CA, Miami, FL,

or New York, NY, and only under the following conditions:

(i) The birds meet the requirements of paragraphs (c)(2)(ii)(A) through (D) of this section; and

(ii) The birds are quarantined for a minimum of 30 days, and for such longer period as may be required by the Administrator in any specific case, at a USDA quarantine facility in accordance with § 93.106.

\* \* \* \* \*

(f) *Performing or theatrical birds returning to the United States.* (1) Performing or theatrical birds of United States origin that are returning to the United States from Canada or Mexico may be imported if:

(i) The birds are found upon port of entry veterinary inspection to be free of avian diseases; and

(ii) The birds are accompanied by a United States veterinary health certificate issued prior to the departure of the birds from the United States and the certificate shows the number from the leg band, tattoo, or microchip affixed to the birds prior to departure; and

(iii) During port of entry veterinary inspection it is determined that the number from the leg band, tattoo, or microchip on the birds is the same as the one listed on the health certificate.

(2) Except for performing or theatrical birds that have been in any region where highly pathogenic avian influenza subtype H5N1 exists, which are subject to the provisions of paragraph (f)(3) of this section, performing or theatrical poultry of United States origin that have been outside the United States in a region other than Canada or Mexico may be imported if:

(i) The birds meet the requirements of paragraphs (f)(1)(i) through (iii) of this section; and

(ii) The birds are accompanied by an import permit issued by APHIS; and

(iii) The owner importing the birds signs and furnishes to the Administrator the following:

(A) A notarized declaration under oath or affirmation (or a statement signed by the owner and witnessed by a Department inspector) stating that the birds have not been in contact with other birds while out of the region (for example, association with other avian species at exhibitions or at aviaries); and

(B) An agreement on VS Form 17-8, obtainable from a Federal inspector at the port of entry, stating:

(1) That the birds will be maintained in confinement in his or her personal possession separate and apart from all birds and other birds for a minimum of

30 days following importation at the address where the birds are to be held and made available for health inspection and testing by Department inspectors upon request until released at the end of such period by such an inspector; and

(2) That appropriate Federal officials in the State of destination will be immediately notified if any signs of disease are noted in any of the birds or any birds die during that period. The owner importing such poultry must comply with the provisions of the aforementioned agreement before the birds may be released from confinement. Except for performing or theatrical birds that have been in any region where highly pathogenic avian influenza subtype H5N1 exists, performing or theatrical birds of United States origin which do not otherwise meet the requirements of paragraphs (f)(1) or (2) of this section may be offered for entry under the provisions of § 93.101(c).

(3) Any performing or theatrical birds of United States origin that have been in any region listed in § 94.6(d) of this subchapter as a region where highly pathogenic avian influenza subtype H5N1 exists may only be imported through the port of Los Angeles, CA, Miami, FL, or New York, NY, and only under the following conditions:

(i) The birds meet the requirements of paragraphs (f)(1)(i) through (iii) of this section; and

(ii) The birds are accompanied by an import permit issued by APHIS; and

(iii) The birds are quarantined for a minimum of 30 days, and for such longer period as may be required by the Administrator in any specific case, at a quarantine facility maintained by APHIS in accordance with paragraphs (c)(3)(ii) through (c)(3)(iv) of this section.

\* \* \* \* \*

■ 3. Section 93.201 is amended as follows:

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

■ b. By adding, at the end of the section, the following: “(Approved by the Office of Management and Budget under control number 0579–0245)”.

**§ 93.201 General prohibitions; exceptions.**

\* \* \* \* \*

(c) *Performing or theatrical poultry returning to the United States.* (1) Performing or theatrical poultry of United States origin that are returning to the United States from Canada or Mexico may be imported if:

(i) The poultry are found upon port of entry veterinary inspection to be free of poultry diseases; and

(ii) The poultry are accompanied by a United States veterinary health certificate issued prior to the departure of the poultry from the United States and the certificate shows the number from the leg band, tattoo, or microchip affixed to the poultry prior to departure; and

(iii) During port of entry veterinary inspection it is determined that the number from the leg band, tattoo, or microchip on the poultry is the same as the one listed on the health certificate.

(2) Except for performing or theatrical poultry that have been in any region where highly pathogenic avian influenza subtype H5N1 exists, which are subject to the provisions of paragraph (c)(3) of this section, performing or theatrical poultry of United States origin that have been outside the United States in a region other than Canada or Mexico may be imported if:

(i) The poultry meet the requirements of paragraphs (c)(1)(i) through (iii) of this section; and

(ii) The poultry are accompanied by an import permit issued by APHIS; and

(iii) The owner importing the poultry signs and furnishes to the Administrator the following:

(A) A notarized declaration under oath or affirmation (or a statement signed by the owner and witnessed by a Department inspector) stating that the poultry have not been in contact with poultry or other birds while out of the region (for example, association with other avian species at exhibitions or at aviaries); and

(B) An agreement on VS Form 17–8, obtainable from a Federal inspector at the port of entry, stating:

(1) That the poultry will be maintained in confinement in his or her personal possession separate and apart from all poultry and other birds for a minimum of 30 days following importation at the address where the poultry are to be held and made available for health inspection and testing by Department inspectors upon request until released at the end of such period by such an inspector; and

(2) That appropriate Federal officials in the State of destination will be immediately notified if any signs of disease are noted in any of the poultry or any poultry die during that period. The owner importing such poultry must comply with the provisions of the aforementioned agreement before the poultry may be released from confinement.

(3) Any performing or theatrical poultry of United States origin that have been in any region listed in § 94.6(d) of this subchapter as a region where highly

pathogenic avian influenza subtype H5N1 exists may only be imported through the port of Los Angeles, CA, Miami, FL, or New York, NY, and only under the following conditions:

(i) The poultry meet the requirements of paragraphs (c)(1)(i) through (iii) of this section; and

(ii) The poultry are accompanied by an import permit issued by APHIS; and

(iii) The poultry are quarantined for a minimum of 30 days, and for such longer period as may be required by the Administrator in any specific case, at a quarantine facility maintained by APHIS in accordance with §§ 93.209 and 93.210.

\* \* \* \* \*

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

■ 4. The authority citation for part 94 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 5. Section 94.6 is amended as follows:

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

■ b. In paragraphs (b)(6), (c)(3), and (c)(4), by removing the words “paragraph (d)” and adding the words “paragraph (f)” in their place.

■ c. By redesignating paragraph (d) as paragraph (f) and adding new paragraphs (d) and (e) to read as set forth below.

■ d. By revising the OMB control number citation at the end of the section to read as follows: “(Approved by the Office of Management and Budget under control numbers 0579–0015 and 0579–0245)”.

**§ 94.6 Carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from regions where exotic Newcastle disease or highly pathogenic avian influenza subtype H5N1 is considered to exist.**

\* \* \* \* \*

(d) Highly pathogenic avian influenza (HPAI) subtype H5N1 is considered to exist in the following regions: Cambodia, China, Indonesia, Japan, Laos, South Korea, Thailand, and Vietnam.

(e) *Carcasses, and parts or products of carcasses, from regions where HPAI subtype H5N1 is considered to exist.* Carcasses, and parts or products of carcasses, of poultry, game birds, or other birds may be imported from a

region where HPAI subtype H5N1 exists only if they are imported for scientific, educational, or research purposes and the Administrator has determined that the importation can be made under conditions that will prevent the introduction of HPAI subtype H5N1 into the United States. The articles must be accompanied by a permit obtained from APHIS prior to the importation in accordance with paragraph (f) of this section, and they must be moved and handled as specified on the permit to prevent the introduction of HPAI subtype H5N1 into the United States.

\* \* \* \* \*

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

■ 6. The authority citation for part 95 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 7. A new § 95.30 is added to read as follows:

#### **§ 95.30 Restrictions on entry of products and byproducts of poultry, game birds, or other birds from regions where highly pathogenic avian influenza (HPAI) subtype H5N1 exists.**

(a) Products or byproducts, including feathers, birds' nests, and bird trophies, of poultry, game birds, or other birds may be imported from a region listed in § 94.6(d) of this subchapter as a region where HPAI subtype H5N1 exists only if the Administrator has determined that the importation can be made under conditions that will prevent the introduction of HPAI subtype H5N1 into the United States. The articles must be accompanied by a permit obtained from APHIS prior to the importation in accordance with paragraph (b) of this section, and they must be moved and handled as specified on the permit to prevent the introduction of HPAI subtype H5N1 into the United States.

(b) To apply for a permit, contact the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, Maryland 20737–1231.

(Approved by the Office of Management and Budget under control number 0579–0245)

Done in Washington, DC, this 4th day of May, 2004.

**Peter Fernandez,**

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

[FR Doc. 04–10524 Filed 5–7–04; 8:45 am]

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## **FEDERAL RESERVE SYSTEM**

### **12 CFR Part 229**

**[Regulation CC; Docket No. R–1192]**

#### **Availability of Funds and Collection of Checks**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Board of Governors is amending appendix A of Regulation CC to delete the reference to the San Antonio check processing office of the Federal Reserve Bank of Dallas and reassign the Federal Reserve routing symbols currently listed under that office to the head office of the Federal Reserve Bank of Dallas. These amendments reflect the restructuring of check processing operations within the Federal Reserve System.

**DATES:** The final rule will become effective on July 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jack K. Walton II, Assistant Director (202/452–2660), or Joseph P. Baressi, Senior Financial Services Analyst (202/452–3959), Division of Reserve Bank Operations and Payment Systems; or Adrienne G. Threatt, Counsel (202/452–3554), Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

**SUPPLEMENTARY INFORMATION:** Regulation CC establishes the maximum period a depository bank may wait between receiving a deposit and making the deposited funds available for withdrawal.<sup>1</sup> A depository bank generally must provide faster availability for funds deposited by a “local check” than by a “nonlocal check.” A check drawn on a bank is considered local if it is payable by or at a bank located in the same Federal Reserve check processing region as the depository bank. A check drawn on a nonbank is considered local if it is payable through a bank located in the same Federal Reserve check processing region as the depository bank. Checks that do not meet the requirements for “local” checks are considered “nonlocal.”

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The

<sup>1</sup> For purposes of Regulation CC, the term “bank” refers to any depository institution, including commercial banks, savings institutions, and credit unions.

appendix includes a list of each Federal Reserve check processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check processing region and thus are local to one another.

As explained in detail in the Board's final rule published in the **Federal Register** on May 28, 2003, the Federal Reserve Banks decided in early 2003 to reduce the number of locations at which they process checks.<sup>2</sup> As part of this restructuring process, the San Antonio office of the Federal Reserve Bank of Dallas will cease processing checks on July 10, 2004. As of that date, banks with routing symbols currently assigned to the San Antonio office for check processing purposes will be reassigned to the Dallas Reserve Bank's head office. As a result of this change, some checks that are drawn on and deposited at banks located in the San Antonio and Dallas check processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules.

The Board accordingly is amending the lists of routing symbols assigned to Eleventh District check processing offices to reflect the transfer of operations from San Antonio to Dallas and to assist banks in identifying local and nonlocal banks. These amendments are effective July 10, 2004, to coincide with the effective date of the underlying check processing changes. The Board is providing advance notice of these amendments to give affected banks ample time to make any needed processing changes. The advance notice will also enable affected banks to amend their availability schedules and related disclosures, if necessary, and provide their customers with notice of these changes.<sup>3</sup> The Federal Reserve routing symbols assigned to all other Federal Reserve branches and offices will remain the same at this time. The Board of Governors, however, intends to issue similar notices at least sixty days prior to the elimination of check operations at

<sup>2</sup> See 68 FR 31592, May 28, 2003. In addition to the general advance notice of future amendments previously provided by the Board, as well as the Board's notices of final amendments, the Reserve Banks are striving to inform affected depository institutions of the exact date of each office transition at least 120 days in advance. The Reserve Banks' communications to affected depository institutions are available at <http://www.frbsservices.org>.

<sup>3</sup> Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.