sections of the NOSB Policy and Procedures Manual: Section IV (Establishing Ad-hoc Committees), Section V (NOP/NOSB Collaboration), and Section VIII (Recommendations on sunset Review Policy). Additionally, they will present a recommendation to update the NOSB New Member Guide.

The Meeting Is Open to the Public. The NOSB has scheduled time for public input for Monday, October 25, 2010, from 10 a.m. to 5:30 p.m. and Wednesday, October 27, 2010 from 8 a.m. to 5 p.m. Individuals and organizations wishing to make oral presentations at the meeting must forward their requests by e-mail, phone, or mail to Ms. Lisa Ahramjian (*see* **FOR FURTHER INFORMATION CONTACT** section above). Individuals or organizations will be given one five-minute slot to present their views. All persons making oral presentations are requested to provide their comments in writing and indicate the topic of their comment, referencing specific NOSB recommendations/topics or noting if they plan to cover multiple topics. Written submissions may contain information other than that presented at the oral presentation. Anyone may submit written comments at the meeting. Persons submitting written comments are asked to provide 30 copies.

Interested persons may visit the NOSB portion of the NOP Web site at *http://www.ams.usda.gov/nop* to view available meeting documents prior to the meeting, or visit *www.regulations.gov* to submit and view comments (*see* **ADDRESSES** section above). Documents presented at the meeting will be posted for review on the NOP Web site approximately six weeks following the meeting.

Dated: September 13, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–23337 Filed 9–17–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 56, 145, 146, and 147

[Docket No. APHIS-2009-0031]

RIN 0579-AD21

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. The proposed changes were voted on and approved by the voting delegates at the Plan's 2008 National Plan Conference. These changes would keep the provisions of the Plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

DATES: We will consider all comments that we receive on or before November 19, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0031*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2009-0031, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0031.

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

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

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

SUPPLEMENTARY INFORMATION:

Background

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

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

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

The proposed amendments discussed in this document are consistent with the recommendations approved by the voting delegates to the National Plan Conference that was held from June 5 through June 7, 2008. Participants in the 2008 National Plan Conference represented flockowners, breeders, hatcherymen, slaughter plants, and Official State Agencies from all cooperating States. The proposed amendments are discussed in detail below.

Simplifying Indemnity Provisions in Part 56

The regulations in 9 CFR part 56 set out conditions for the payment of indemnity for costs associated with poultry that are infected with or exposed to the H5 or H7 subtypes of low pathogenic avian influenza (H5/H7 LPAI). Section 56.3 states that indemnity may be paid for destruction and disposal of poultry that were infected with or exposed to H5/H7 LPAI, destruction of eggs for testing for H5/H7 LPAI, and cleaning and disinfection of premises, conveyances, and materials that came into contact with poultry that were infected with or exposed to H5/H7 LPAI (or destruction and disposal, if the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impractical).

Section 56.3 also sets the percentages of the costs of those activities that are eligible for indemnity. Specifically, paragraph (b) of § 56.3 indicates that the Administrator is authorized to pay 100

percent indemnity for costs related to all poultry that are infected with or exposed to H5/H7 LPAI, unless those poultry do not participate in the avian influenza (AI) surveillance program provided for poultry in the regulations in 9 CFR part 145 or 146. For those poultry, the Administrator is authorized to pay indemnity for only 25 percent of costs. The payment of only 25 percent indemnity thus provides an incentive for producers to participate in AI surveillance programs. The specific poultry that are eligible for only 25 percent indemnity, as listed in paragraphs (b)(1) through (b)(6), are:

- Egg-type breeding chickens from a flock that participates in any Plan program in 9 CFR part 145 but that does not participate in the U.S. Avian Influenza Clean program of the Plan in § 145.23(h);
- Meat-type breeding chickens from a flock that participates in any Plan program in 9 CFR part 145 but that does not participate in the U.S. Avian Influenza Clean program of the Plan in § 145.33(l);
- Breeding turkeys from a flock that participates in any Plan program in 9 CFR part 145 but that does not participate in the U.S. H5/H7 Avian Influenza Clean program of the Plan in § 145.43(g);
- Commercial table-egg layers from a premises that has 75,000 or more birds and that does not participate in the U.S. H5/H7 Avian Influenza Monitored program of the Plan in § 146.23(a);
- Commercial meat-type chickens that are associated with a slaughter plant that slaughters 200,000 or more meat-type chickens per operating week and that does not participate in the U.S. H5/H7 Avian Influenza Monitored program of the Plan in § 146.33(a); and
- Commercial meat-type turkeys that are associated with a slaughter plant that slaughters 2 million or more meat-type turkeys in a 12-month period and that does not participate in the U.S. H5/H7 Avian Influenza Monitored program of the Plan in § 146.43(a).

The regulations in paragraph (b)(7) also provide for the payment of 25 percent indemnity for any poultry located in a State that does not participate in the diagnostic surveillance program for H5/H7 LPAI, as described in § 146.14, or that does not have an initial State response and containment plan for H5/H7 LPAI that is approved by APHIS under § 56.10, unless such poultry participate in the Plan with another State that does participate in the diagnostic surveillance program for H5/H7 LPAI and has an initial State response and containment plan for H5/H7 LPAI that is approved by APHIS. This provision is intended to provide States with an incentive to participate in the NPIP's AI surveillance and control programs.

Since the regulations in part 56 were established, an H5/H7 LPAI surveillance program has been added that covers new types of commercial poultry, namely the program for commercial upland game birds, commercial waterfowl, raised-for-release upland game birds, and raised-for-release waterfowl in § 146.53(a). The program in § 146.53(a) contains size thresholds for each of the various types of poultry included in the program. Slaughter plants and premises above these size thresholds are required to participate in the program in § 146.53(a) in order to participate in the Plan, similar to the size thresholds for slaughter plants and premises in the other subparts in 9 CFR part 146. In addition, in this document, we are proposing to add to 9 CFR part 145 provisions for an AI surveillance program for meat-type waterfowl breeding flocks, in proposed § 145.93(c). (See the description under the heading "New Provisions for Meat-Type Waterfowl Breeding Flocks and Products" later in this document.)

Our general intention in establishing § 56.3 was to provide an incentive to participate in NPIP AI surveillance programs for all poultry for which such programs are available. To ensure that § 56.3 continues to provide such an incentive as new AI surveillance programs are added for new types of poultry, we are proposing to change the structure of § 56.3 to refer more generally to AI surveillance programs available to breeding poultry in 9 CFR part 145 and to commercial poultry in part 146. In order to do this, we would remove paragraphs (b)(1) through (b)(6) from § 56.3, redesignate paragraph (b)(7) as paragraph (b)(3), and add two new paragraphs (b)(1) and (b)(2) to cover breeding poultry and commercial poultry, respectively.

Paragraph (b)(1) would provide that poultry that are from a breeding flock that participates in any Plan program in 9 CFR part 145 but that does not participate in the U.S. Avian Influenza Clean or the U.S. H5/H7 Avian Influenza Clean program of the Plan available to the flock in 9 CFR part 145 would only be eligible for 25 percent indemnity.

Paragraph (b)(2) would provide that poultry that are from a commercial flock or slaughter plant that does not participate in the U.S. Avian Influenza Monitored program available to the commercial flock or slaughter plant in 9 CFR part 146 would only be eligible for 25 percent indemnity. As part of this change, we are proposing to add a definition of *commercial flock or slaughter plant* to § 56.1, which sets out definitions of terms used in part 56. We would define *commercial flock or slaughter plant* as a commercial poultry flock or slaughter plant that is required because of its size to participate in the special provisions in 9 CFR part 146 in order to participate in the Plan. (Subpart A of part 146 contains the general provisions; subparts B through E contain special provisions for specific types of commercial poultry.) We would also remove the definitions of *commercial meat-type flock*, *commercial table-egg layer flock*, *commercial table-egg layer premises*, *meat-type chicken*, and *meat-type turkey* from § 56.1, as they would no longer be necessary.

These changes would simplify the regulations and more clearly express the principle that, for certain poultry operations, participation in NPIP AI surveillance programs is required in order for the poultry to be eligible for 100 percent indemnity in the event of an H5/H7 LPAI outbreak.

Amendments to Flock Testing Requirements and Procedures for Mycoplasma Bacteria

The regulations in § 145.14 set out testing requirements for breeding flocks participating in NPIP programs in part 145. Paragraph (b) in § 145.14 sets out testing requirements for *Mycoplasma gallisepticum* and *M. synoviae*. We are proposing to make several changes to these testing requirements to update them and make them consistent with current best practices.

We are proposing to amend paragraph (b) at several locations to indicate that these testing requirements apply to *M. meleagridis* as well as *M. gallisepticum* and *M. synoviae*. Currently, paragraph (c) of § 145.14 covers *M. meleagridis*; this paragraph refers the reader to § 145.43(d)(2) for a list of official blood tests for *M. meleagridis*. (Paragraph (d)(3) of § 145.43 provides additional instructions on testing for *M. meleagridis*.) However, many of the testing procedures work for all three bacteria, and it makes sense to address testing for these bacteria together in § 145.14(b) because they are also addressed together in § 147.6, which sets out a procedure for determining the status of flocks reacting to tests for these three bacteria. Accordingly, we are proposing to remove and reserve §§ 145.14(c) and 145.43(d)(2) and (d)(3).

The testing provisions in paragraph (b) have referred to blood testing specifically. However, the regulations in § 147.30 provide a molecular

examination procedure for *M. gallisepticum* and *M. synoviae*, and the regulations in § 147.31 provide another molecular examination procedure for *M. gallisepticum*. These molecular examination procedures do not involve blood testing. Therefore, we are proposing to make several changes in paragraph (b) to indicate that the regulations provide for testing procedures generally.

Paragraph (b)(1) of § 145.14 currently provides for the use of the hemagglutination inhibition (HI) test, the microhemagglutination inhibition test, and the enzyme-linked immunosorbent assay (ELISA) test to confirm the positive results of other serological tests. We are proposing to remove the ELISA test from this list. The ELISA test is a screening assay and should not be used to confirm positive serological results.

Paragraph (b)(5) of § 145.14 currently provides that the official molecular examination procedures for *M. gallisepticum* and *M. synoviae* are the polymerase chain reaction (PCR) test described in § 147.30 and the real-time PCR test described in § 147.31. However, the real-time PCR test in § 147.31 is approved only for *M. gallisepticum*. We are therefore proposing to remove the reference to the real-time PCR as an official molecular examination procedure for *M. synoviae*. If, at some point in the future, we expand the use of the molecular examination procedures in §§ 147.30 and 147.31 to *M. meleagridis* and the use of the real-time PCR test in § 147.31 to *M. synoviae*, we will amend § 145.14(b)(5) accordingly.

As noted earlier, § 147.6 sets out a procedure for determining the status of flocks reacting to tests for *M. gallisepticum*, *M. meleagridis*, and *M. synoviae*. We are proposing to make several updates to this section.

The introductory text of § 147.6 currently states that the official tests for *Mycoplasma* are the macroagglutination tests for *Mycoplasma* antibodies, as described in "Standard Methods for Testing Avian Sera for the Presence of Mycoplasma Gallisepticum Antibodies" published by the Agricultural Research Service, USDA, March 1966, and the microagglutination tests, as reported in the Proceedings, Sixteenth Annual Meeting of the American Association of Veterinary Laboratory Diagnosticians, 1973. The introductory text goes on to state that procedures for isolation and identification of *Mycoplasma* may be found in Isolation and Identification of Avian Pathogens, published by the American Association of Avian Pathologists, and §§ 147.15 and 147.16.

However, as noted earlier, there are several official tests for *Mycoplasma*, not just the macroagglutination test in the 1966 Agricultural Research Service publication. In addition, § 145.14(b)(1) lists all the official tests; it is not necessary to do so again in § 147.6. Accordingly, we would remove the first sentence of the introductory text of § 147.6. In addition, we would add to the list of procedures for isolation and identification of *Mycoplasma* a reference to the Manual of Diagnostic Tests and Vaccines for Terrestrial Animals, which is published by the World Organization for Animal Health (OIE). These procedures are internationally recognized as efficacious.

Paragraph (a)(1) of § 147.6 states that, if a flock is tested by the tube agglutination or the serum plate test and the test is negative, the flock's status is negative for *Mycoplasma*. We would amend this paragraph to include the ELISA and the official molecular examination procedures. These tests are also effective at determining a flock's status.

Paragraph (a)(2) of § 147.6 states that, if the tube agglutination or the serum plate test is positive, the HI test and/or the serum plate dilution (SPD) test shall be conducted. However, for egg-type and meat-type chicken and waterfowl, exhibition poultry, and game bird flocks, if more than 50 percent of the samples are positive for either *M. gallisepticum*, *M. synoviae*, or both, paragraph (a)(2) requires the HI and/or the SPD test to be conducted on 10 percent of the positive samples or 25 positive samples, whichever is greater.

We are amending the list of screening assays that require confirmation to include the ELISA, as listed in proposed paragraph (a)(1). We are removing the SPD test from the list of confirmatory tests for serological screening assays because there are currently no laboratories that use this test; the HI test is widely used and accepted as the preferred test.

For that reason, we would also remove the SPD test from the list of confirmatory tests for the HI test when more than 50 percent of the samples from egg-type and meat-type chicken flocks and waterfowl, exhibition poultry, and game bird flocks are positive on the HI test. This change would provide for the use of only the HI test as a confirmatory test in this case. We would also remove the text indicating that this confirmatory procedure is required only for egg-type and meat-type chicken flocks and waterfowl, exhibition poultry, and game bird flocks, as the procedure is necessary any time more than 50 percent of the samples are positive on the HI test, to confirm the validity of the test.

Paragraph (a)(4) of § 147.6 states that, if HI titers of 1:40 or SPD titers of 1:5 are found, the flock shall be considered suspicious and shall be retested in accordance with § 147.6(a)(6). Paragraph (a)(6) states that, 14 days after the previous bleeding date, all birds or a random sample comprised of 75 birds shall be tested by the serum plate or tube agglutination test, and that tested birds shall be identified by numbered bands.

We are proposing to move this information into paragraph (a)(2), as it follows naturally from the other information about administering the HI test. We would also make some changes to it. First, we would remove all references to the SPD test, for reasons discussed earlier; under this proposal, paragraph (a)(2) would state only that HI titers of 1:40 or more may be interpreted as suspicious. We would replace the current procedure of testing with SPD or tube agglutination with a culture procedure. In this procedure, appropriate antigen detection samples would be taken promptly (within 7 days of the original sampling) from 30 clinically affected birds and examined by an approved cultural technique individually, or pooled (up to 5 swabs per test) and used in a molecular examination procedure or in vivo bioassay. The molecular examination procedure and in vivo bioassay are widely accepted as confirmatory tests for this procedure.

We are proposing to remove the requirement to identify tested birds by numbered bands because other means are available to identify birds that have been tested; Official State Agencies can work with producers to determine the most cost-effective method in individual cases.

In § 145.14, paragraph (b)(1) states that HI titers of 1:40 or less may be interpreted as equivocal, and final judgment may be based on further samplings and/or culture of reactors. As noted earlier, § 147.6 refers to HI titers of 1:40 or less as "suspicious." We are proposing to amend § 145.14(b)(1) to be consistent with § 147.6.

Paragraphs (a)(3) through (a)(15) of § 147.6 provide extensive procedures for testing and retesting flocks that have been tested with HI in order to determine whether they are eligible for the classification for which they are tested. We are proposing to replace these paragraphs with new paragraphs (a)(3) and (a)(4), which would provide a much simpler procedure. Under

proposed paragraph (a)(3), if the in vivo bioassay, molecular examination procedure, or culture procedure referred to in proposed paragraph (a)(2) is negative, the Official State Agency would be able to qualify the flock for the classification for which it was tested. In the event of contaminated cultures, we would require the molecular examination technique to be used to make a final determination. Under proposed paragraph (a)(4), if the in vivo bioassay, molecular examination procedures, or culture procedures are positive, the flock would be considered infected. These proposed provisions would greatly simplify the regulations and recognize the utility of the in vivo bioassay, molecular examination procedures, and culture procedures.

Changes to AI Clean Programs for Egg-Type and Meat-Type Chicken Breeding Flocks

The regulations set out requirements for the U.S. Avian Influenza Clean classification for multiplier egg-type chicken breeding flocks, multiplier meat-type chicken breeding flocks, primary egg-type chicken breeding flocks, and primary meat-type chicken breeding flocks at §§ 145.23(h), 145.33(l), 145.73(f), and 145.83(g) respectively.

The current requirements for these U.S. Avian Influenza Clean classifications are nearly identical. The introductory text of §§ 145.23(h), 145.33(l), 145.73(f), and 145.83(g) states that the U.S. Avian Influenza Clean program is intended to be the basis from which the breeding-hatchery industry may conduct a program for the prevention and control of avian influenza. It is intended to determine the presence of avian influenza in breeding chickens through routine serological surveillance of each participating breeding flock. A flock and the hatching eggs and chicks produced from it will qualify for this classification when the Official State Agency determines that they have met the requirements of the relevant paragraph listed earlier.

Each of those paragraphs contains a subparagraph indicating that a flock is eligible for the classification if a minimum of 30 birds have been tested negative for antibodies to avian influenza when more than 4 months of age and prior to the onset of egg production. To retain this classification, a sample of at least 30 birds must be tested negative at intervals of 90 days, and primary spent fowl must be tested within 30 days prior to movement to slaughter. Alternatively, a sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 90-day period. (The only exception is for meat-type chicken multiplier breeding flocks, which are only required to have 15 birds tested, at the same 90-day interval, in order to be eligible for and to retain the classification.)

We are proposing to make several changes to these classifications. First, we are proposing to remove the references to serological surveillance from the introductory text of the classifications, instead referring simply to "surveillance." As we are proposing to refer in the regulatory text specifically to the AI testing procedures in § 145.14(d), referring to serological surveillance in the introductory text is not necessary. In addition, some of the tests in § 145.14(d) are not serological tests — for example, the real-time reverse transcriptase PCR assay in paragraph (d)(2)(i).

We would continue to require a minimum of 30 birds to be tested negative for antibodies to avian influenza when more than 4 months of age and prior to the onset of egg production, and we would continue to provide the 2 options for retaining the U.S. Avian Influenza Clean classification that are found in the current regulations. We are proposing to add a third option by which flocks could retain the classification. Under this option, the flock could retain the classification if the flock is tested as provided in § 145.14(d) and found negative at intervals of 30 days or less, and a total of 30 (15 for meat-type multiplier breeding flocks) samples are collected and tested within each 90-day period. This option would provide additional flexibility to use the flock screening tests in § 145.14(d)(2).

We are also proposing to put in place requirements for testing spent fowl for each of the options for retaining the U.S. Avian Influenza Clean classification. As noted earlier, under the current regulations, spent fowl are required to be tested only if the sample of 30 birds is being tested and found negative at intervals of 90 days. However, testing of spent fowl is a useful addition to surveillance for any of the options for retaining classification, both the existing options and the one we are proposing. Accordingly, we are proposing to require spent fowl testing as part of all of the options for retaining classification. Specifically, we would require in paragraphs §§ 145.23(h)(2), 145.33(l)(2), 145.73(f)(2), and 145.83(g)(2) that all spent fowl, up to a maximum of 30, be tested serologically and found negative within 21 days prior to movement to slaughter.

We are proposing to reduce the number of days before slaughter within which spent fowl must be tested from 30 to 21 to be consistent with testing requirement for the NPIP AI surveillance programs in part 146 in which poultry (meat-type chickens and meat-type turkeys) are moved to slaughter. A 21-day testing requirement would also be consistent with the guidelines for AI surveillance in the OIE Terrestrial Animal Health Code.[1] We are proposing to require only a sample of a maximum of 30 spent fowl to be tested, rather than the current requirement to test all spent fowl, because it is not necessary to test more than 30 spent fowl in order to provide adequate assurance that the flock is free of AI; this is consistent with the general requirement to test 30 birds per flock.

Changes to H5/H7 AI Clean Programs for Turkey Breeding Flocks and for Waterfowl, Exhibition Poultry, and Game Bird Breeding Flocks

The regulations set out requirements for the U.S. H5/H7 Avian Influenza Clean classification for turkey breeding flocks and for waterfowl, exhibition poultry, and game bird breeding flocks in §§ 145.43(g) and 145.53(e), respectively. We are proposing to make some minor changes to the text of these classifications to standardize and clarify their language. We are also proposing to add spent fowl testing requirements for all surveillance options in these classifications.

The introductory text of both §§ 145.43(g) and 145.53(e) is similar to that of the U.S. Avian Influenza Clean classifications discussed earlier, except that both refer to the H5 and H7 subtypes of AI. We are proposing to change those references to refer to "the H5/H7 subtypes of avian influenza," as that usage is consistent with our references to these two subtypes in 9 CFR part 146. We are also proposing to remove the word "serological" from the same place as in the introductory text to the U.S. Avian Influenza Clean classifications for breeding chickens, for the same reasons discussed earlier with regard to those AI classifications.

Within §§ 145.43(g) and 145.53(e), paragraphs (g)(1) and (e)(1) address primary breeding flocks for turkeys and for waterfowl, game birds, and exhibition poultry, respectively, while paragraphs (g)(2) and (e)(2) address multiplier breeding flocks. Each of these

[1] The guidelines may be viewed on the Internet at (*http://www.oie.int/eng/normes/mcode/en_chapitre_1.10.4.htm*).

paragraphs refers in its introductory text to testing using the agar gel immunodiffusion test in § 147.9. As all of the tests in § 145.14(d) are effective at testing for AI in turkeys and in waterfowl, exhibition poultry, and game birds, we are proposing to remove the specific references to agar gel immunodiffusion testing. Instead, we would add the words "as provided in § 145.14(d)" to references to AI testing to direct the reader to the approved AI tests.

We are proposing to put in place requirements for testing spent fowl for each of the options for retaining the U.S. H5/H7 Avian Influenza Clean classification for turkey breeding flocks and waterfowl, exhibition poultry, and game bird breeding flocks. Similar to the spent fowl testing requirements for chickens discussed earlier, spent fowl from turkey breeding flocks are currently required to be tested only if a sample of 30 birds is being tested and found negative at intervals of 90 days. However, testing of spent fowl is a useful addition to surveillance for any of the options for retaining the U.S. H5/H7 Avian Influenza Clean classification. Accordingly, we are proposing to add a new paragraph § 145.43(g)(3) to require all spent fowl from turkey breeding flocks, up to a maximum of 30, to be tested serologically and found negative within 21 days prior to movement to slaughter for all of the surveillance options. (We would redesignate current paragraph (g)(3), which contains reporting requirements that apply if killed AI vaccine is used, as paragraph (g)(4).)

The U.S. H5/H7 Avian Influenza Clean classification for waterfowl, exhibition poultry, and game bird breeding flocks does not currently include spent fowl testing requirements. However, testing any spent fowl that are produced by these flocks for AI would be a useful addition to surveillance for this classification as well. Therefore, we are proposing to add a new paragraph § 145.53(e)(3) to require spent fowl to be tested for these flocks as well.

The classification provisions for primary and multiplier turkey breeding flocks in § 145.43(g)(1) and (g)(2), respectively, require that flocks test negative for antibodies to type A AI virus. Positive results must be further tested by an authorized laboratory using the hemagglutination inhibition test to detect antibodies to the hemagglutinin subtypes H5 and H7 when more than 4 months of age and prior to the onset of egg production. We are proposing to remove this 2-step process and instead require that a minimum of 30 birds test negative to the H5/H7 subtypes of AI. The testing procedures in § 145.14(d) set out the official tests for AI and indicate that the official determination of a flock as positive for the H5 or H7 subtypes of avian influenza may be made only by the National Veterinary Services Laboratories. It is appropriate to refer to these testing procedures, which apply to all poultry covered in 9 CFR part 145, rather than setting out a separate testing procedure in the turkey breeding flock U.S. H5/H7 Avian Influenza Clean classification. This change would also make the provisions in § 145.43 consistent with the other AI classifications in the regulations.

The regulations in § 145.53(e)(1) and (e)(2) also refer to testing for antibodies to the H5 and H7 subtypes of AI. As other AI classifications refer to testing for the disease itself and not antibodies to the disease, we would remove references to testing for antibodies to make the regulations consistent.

We are proposing to make one other change related to AI in part 145. In § 145.1, we are proposing to add a definition of *avian influenza*. We would define AI as "an infection or disease of poultry caused by viruses in the family *Orthomyxoviridae*, genus *Influenzavirus* A." Including this definition would provide additional clarity regarding AI.

Salmonella Negative Status for Primary Meat-Type Chicken Breeding Flocks in the U.S. Salmonella Monitored Classification

The regulations in § 145.83(f) set out provisions for the U.S. Salmonella Monitored classification for primary meat-type chicken breeding flocks and the hatching eggs and chicks produced from it. This classification requires participating flocks to be maintained in compliance with §§ 147.21, 147.24(a), and 147.26, requires feed to be processed, stored, and transported to prevent contamination with *Salmonella*, and requires chicks to be hatched in a hatchery meeting the requirements of §§ 147.23 and 147.24(b) and sanitized or fumigated. It also contains testing procedures designed to verify the flock's *Salmonella* status.

In recent years, trading partners have begun to require that baby chicks and hatching eggs originate from breeding flocks free of certain serotypes of *Salmonella*. The current provisions of the U.S. Salmonella Monitored classification do not provide for serotyping. Therefore, we are proposing to add a serotyping provision to paragraph (f)(1)(vi). This paragraph currently requires an Authorized Agent to take environmental samples as described in § 147.12 from each flock at 4 months of age and every 30 days thereafter. An authorized laboratory for *Salmonella* must then examine the environmental samples bacteriologically. We are proposing to require all *Salmonella* isolates from a flock to be serogrouped and reported to the Official State Agency on a monthly basis.

We are also proposing to amend paragraph (f)(1)(vii), which provides that owners of flocks may vaccinate with a paratyphoid vaccine if they leave a sample unvaccinated until the flock reaches 4 months of age, to indicate that this sample will allow for the serological testing that would be required under proposed paragraph (f)(1)(vi).

Some trading partners' import requirements separate the *Salmonella* status of the flock from the status of the hatchery containing the hatching eggs and chicks produced from it. A primary meat-type chicken breeding flock can thus be considered to be free of *Salmonella*, based on regular testing, even if there is environmental *Salmonella* contamination in the hatchery. However, the current U.S. Salmonella Monitored classification does not provide for this; it applies to both the flock and the hatching eggs and chicks produced from it. To provide flock owners with a means to demonstrate their flock's *Salmonella*-negative status, we are proposing to add a new paragraph (f)(1)(viii) with provisions under which a flock could be considered "*Salmonella* negative."

Under proposed paragraph (f)(1)(viii), any flock entering the production period that is in compliance with all the requirements of § 145.83(f) with no history of *Salmonella* isolations would be considered "Salmonella negative" and could retain this definition as long as no environmental or bird salmonella isolations are identified and confirmed from the flock or flock environment by sampling on 4 separate collection dates over a minimum of a 2-week period. Sampling and testing would have to be performed as described in proposed paragraph (f)(1)(vi). An unconfirmed environmental *Salmonella* isolation would not change this Salmonella negative status, as the "Salmonella negative" status is intended to reflect only the status of the flock itself.

These proposed provisions would provide participants in the U.S. Salmonella Monitored classification for primary meat-type breeding turkeys with new means to verify the flock's *Salmonella* status for trading partners.

New Provisions for Meat-Type Waterfowl Breeding Flocks and Products

We are proposing to add a new subpart I to 9 CFR part 145, which would consist of §§ 145.91 through 145.94. This subpart would set out special provisions for the participation of meat-type waterfowl breeding flocks and products in the Plan. Although subpart E in 9 CFR part 145 provides special provisions for waterfowl, exhibition poultry, and game bird breeding flocks and products, these provisions are directed towards hobbyist and exhibition waterfowl and are not necessarily suited for meat-type waterfowl breeding flocks. Adding a new subpart I would allow the NPIP to address issues related to meat-type waterfowl breeding flocks specifically.

We are proposing to amend subpart E to make it clear that meat-type waterfowl breeding flocks would no longer be covered under that subpart. We would amend the section heading of subpart E and the introductory text of § 145.52, "Participation," to indicate that the subpart's applicability is limited to hobbyist and exhibition waterfowl. We would add a sentence to the introductory text of § 145.52 indicating that the special provisions that apply to meat-type waterfowl flocks are found in subpart I of part 145. We would also amend §§ 145.53 and 145.54 in a few places to reflect these changes. The amendments can be found in the proposed regulatory text at the end of this document.

The structure of subpart I would be similar to the structure of subparts B through H in part 145. Section 145.91, "Definitions," would contain a definition of *meat-type waterfowl breeding flocks*. This term would be defined as: Flocks of domesticated duck or goose that are composed of stock that has been developed and is maintained for the primary purpose of producing baby poultry that will be raised under confinement for the primary purpose of producing meat for human consumption.

Section 145.92, "Participation," would state that participating flocks of meat-type waterfowl and the eggs and baby poultry produced from them shall comply with the applicable general provisions of subpart A of part 145 and the special provisions of proposed subpart I. In addition:

- Started poultry would lose their identity under Plan terminology when not maintained by Plan participants under the conditions prescribed in § 145.5(a).
- Hatching eggs produced by primary breeding flocks would have to be fumigated (see § 147.25) or otherwise sanitized.
- Any nutritive material provided to baby poultry would have to be free of the avian pathogens that are officially represented in the Plan disease classifications listed in § 145.10.

These conditions, which are similar to the conditions for participation in other subparts in part 145, would help to ensure that flocks that participate in the Plan are free of poultry diseases.

Section 145.93, "Terminology and classification; flocks and products," would set out conditions for two Plan classifications for meat-type breeding waterfowl, the U.S. Pullorum-Typhoid Clean classification and the U.S. Avian Influenza Clean classification. The provisions of these classifications are similar to those for other types of poultry in part 145.

Paragraph (a) would be reserved, as it is in other subparts in part 145. Paragraph (b) would contain the requirements for the U.S. Pullorum-Typhoid Clean classification. A qualifying flock would be one in which freedom from pullorum and typhoid has been demonstrated to the Official State Agency under the criteria in one of proposed paragraphs (b)(1) through (b)(5).

Proposed paragraph (b)(1) would provide that a flock would qualify if it has been officially blood tested within the past 12 months with no reactors.

Proposed paragraph (b)(2) would provide that a flock would qualify if it is a multiplier breeding flock, or a breeding flock composed of progeny of a primary breeding flock which is intended solely for the production of multiplier breeding flocks, and meets the following specifications as determined by the Official State Agency and the Service:

- The flock is located in a State where all persons performing poultry disease diagnostic services within the State are required to report to the Official State Agency within 48 hours the source of all poultry specimens from which *S. pullorum* or *S. gallinarum* is isolated;
- The flock is composed entirely of birds that originated from U.S. Pullorum-Typhoid Clean breeding flocks or from flocks that met equivalent requirements under official supervision; and
- The flock is located on a premises where a flock not classified as U.S. Pullorum-Typhoid Clean was located the previous year. In this circumstance, an Authorized Testing Agent would have to blood test up to 300 birds per flock, as described in § 145.14, if the Official State Agency determines that the flock has been exposed to pullorum-typhoid. In making determinations of exposure and setting the number of birds to be blood tested, the Official State Agency would evaluate the results of any blood tests, described in § 145.14(a)(1), that were performed on an unclassified flock located on the premises during the previous year; the origins of the unclassified flock; and the probability of contacts between the flock for which qualification is being sought and infected wild birds, contaminated feed or waste, or birds, equipment, supplies, or personnel from flocks infected with pullorum-typhoid.

(NOTE: In addition to requiring blood testing when a flock not classified as U.S. Pullorum-Typhoid Clean was located on a premises the previous year, similar provisions in §§ 145.23(b)(2)(iii), 145.33(b)(2)(iii), 145.43(b)(2)(iii), and 145.53(b)(2)(iii) also require blood testing when no poultry has been located on the premises the previous year. Testing is not necessary in the latter circumstance, and we are proposing to remove the requirement to conduct blood testing on a flock when no poultry was located on the premises the previous year in each of these paragraphs.)

Paragraph (b)(3) would provide that a flock would qualify if it is a multiplier breeding flock that originated from U.S. Pullorum-Typhoid Clean breeding flocks or from flocks that met equivalent requirements under official supervision, and is located in a State in which it has been determined by the Service that:

- All hatcheries within the State are qualified as "National Plan Hatcheries" or have met equivalent requirements for pullorum-typhoid control under official supervision;
- All hatchery supply flocks within the State are qualified as U.S. Pullorum-Typhoid Clean or have met equivalent requirements for pullorum-typhoid control under official supervision. However, if other domesticated fowl are maintained on the same premises as the participating flock, freedom from pullorum-typhoid infection would be demonstrated by an official blood test of each of these fowl;
- All shipments of products other than U.S. Pullorum-Typhoid Clean, or equivalent, into the State are prohibited;
- All persons performing poultry disease diagnostic services within the State are required to report to the Official State Agency within 48 hours the source of all poultry specimens from which *S. pullorum* or *S. gallinarum* is isolated;
- All reports of any disease outbreak involving a disease covered under the Plan are promptly followed by an investigation by the Official State

Agency to determine the origin of the infection. If the origin of the infection involves another State, or if there is exposure to poultry in another State from the infected flock, then the NPIP would conduct an investigation;

- All flocks found to be infected with pullorum or typhoid are quarantined until marketed or destroyed under the supervision of the Official State Agency, or until subsequently blood tested, following the procedure for reacting flocks as contained in § 145.14(a)(5), and all birds fail to demonstrate pullorum or typhoid infection; and
- All poultry, including exhibition, exotic, and game birds, but excluding waterfowl, going to public exhibition shall come from U.S. Pullorum-Typhoid Clean or equivalent flocks, or have had a negative pullorum-typhoid test within 90 days of going to public exhibition.

Discontinuation of any of these conditions or procedures, or the occurrence of repeated outbreaks of pullorum or typhoid in poultry breeding flocks within or originating within the State would be grounds for the Service to revoke its determination that such conditions and procedures have been met or complied with. Such action would not be taken until a thorough investigation has been made by the Service and the Official State Agency has been given an opportunity to present its views.

Paragraph (b)(4) would provide that a flock would qualify if it is a multiplier breeding flock located in a State which has been determined by the Service to be in compliance with the provisions of proposed paragraph (a)(3), and in which pullorum disease or fowl typhoid is not known to exist nor to have existed in hatchery supply flocks within the State during the preceding 24 months.

Paragraph (b)(5) would provide that a flock would qualify if it is a primary breeding flock located in a State determined to be in compliance with the provisions of paragraph (a)(4) of this section, and in which a sample of 300 birds from flocks of more than 300, and each bird in flocks of 300 or less, has been officially tested for pullorum-typhoid within the past 12 months with no reactors. However, when a flock is a primary breeding flock located in a State which has been deemed to be a U.S. Pullorum-Typhoid Clean State for the past 3 years, and during which time no isolation of pullorum or typhoid has been made that can be traced to a source in that State, a bacteriological examination monitoring program or a serological examination monitoring program acceptable to the Official State Agency and approved by the Service could be used in lieu of annual blood testing.

Compliance with any one of these provisions is sufficient to ensure that pullorum-typhoid is not present in a meat-type waterfowl breeding flock in the U.S. Pullorum-Typhoid Clean classification, as evidenced by the success of these provisions when used for the classification in other types of poultry.

Proposed paragraph (c) would set out the provisions of the U.S. Avian Influenza Clean classification. The intent of this program would be to serve as the basis from which the meat-type waterfowl breeding-hatchery industry may conduct a program for the prevention and control of H5/H7 AI. It would be intended to determine the presence of the H5/H7 AI in meat-type waterfowl breeding flocks through routine surveillance of each participating breeding flock. There would be separate surveillance provisions for primary breeding flocks and multiplier breeding flocks of meat-type waterfowl.

Paragraph (c)(1) would provide that a primary meat-type waterfowl breeding flock would qualify for the U.S. Avian Influenza Clean classification if a minimum of 30 birds from the flock have been tested negative to H5/H7 AI as provided in § 145.14(d) when more than 4 months of age. To retain this classification:

- A sample of at least 30 birds would have to be tested negative at intervals of 90 days; or
- A sample of fewer than 30 birds could be tested, and found to be negative, at any one time if all pens were equally represented and a total of 30 birds were tested within each 90-day period.

Paragraph (c)(2) would provide that a multiplier meat-type waterfowl breeding flock would also qualify for the classification if a minimum of 30 birds from the flock have been tested negative to H5/H7 AI as provided in § 145.14(d) when more than 4 months of age. The options for retaining the classification would be identical to those for primary breeding flocks.

Consistent with the changes proposed in this document to require testing of spent fowl in the AI programs for other types of poultry, paragraph (c)(3) would require that, during each 90-day period, all primary and multiplier spent fowl, up to a maximum of 30, be tested serologically and found negative within 21 days prior to movement to slaughter.

These provisions would be sufficient to determine whether H5/H7 AI is present in participating meat-type waterfowl breeding flocks. Similar provisions have been used successfully in other AI classifications in part 145.

Section 145.94, "Terminology and classification; States," would set out conditions for the U.S. Pullorum-Typhoid Clean State classification. Several of the subparts for specific types of poultry in part 145 contain provisions for this classification. To be declared a U.S. Pullorum-Typhoid Clean State, APHIS would have to determine that the following two requirements have been met:

- The State is in compliance with the provisions contained in §§ 145.23(b)(3)(i) through (vii), 145.33(b)(3)(i) through (vii), 145.43(b)(3)(i) through (vi), 145.53(b)(3)(i) through (vii), 145.73(b)(2)(i), 145.83(b)(2)(i), and proposed 145.93(b)(3)(i) through (vii). Compliance with these provisions ensures that the State has the infrastructure to detect and respond to outbreaks of pullorum-typhoid; and
- No pullorum disease or fowl typhoid is known to exist nor to have existed in hatchery supply flocks within the State during the preceding 12 months. However, pullorum disease or fowl typhoid found within the preceding 24 months in waterfowl, exhibition poultry, and game bird breeding flocks would not prevent a State that is otherwise eligible from qualifying. This exception is standard in the U.S. Pullorum-Typhoid Clean State classifications; while pullorum disease is found extremely rarely in the United States, it is most often found in these types of poultry, often outside a commercial poultry production setting, and it is not necessary to remove a U.S. Pullorum-Typhoid Clean State classification for such a finding.

If these conditions are discontinued, or repeated outbreaks of pullorum or typhoid occur in hatchery supply flocks of this section, or if an infection spreads from the originating premises, APHIS would have grounds to revoke its determination that the State is entitled to this classification. Such action would not be taken until a thorough investigation has been made by the Service and the Official State Agency has been given an opportunity for a hearing in accordance with rules of practice adopted by the Administrator.

As noted, several of the subparts for specific types of poultry in part 145 contain provisions for the U.S. Pullorum-Typhoid Clean State classification. All of those subparts contain lists of the provisions with which the State must be in compliance. Some of these do not reflect the addition of relevant provisions in subparts G and H (for primary egg-type chicken and

primary meat-type chicken breeding flocks, respectively); none of these include the provisions in § 145.93(b)(3)(i) through (vii) that we are proposing to add. We are therefore also proposing to update the lists of provisions with which a State must be in compliance in order to be declared a U.S. Pullorum-Typhoid Clean State in §§ 145.24(a)(1)(i), 145.34(a)(1)(i), 145.44(a)(1)(i), and 145.54(a)(1)(i) to keep them up to date and to reflect the proposed changes.

Definition of H5/H7 LPAI in Part 146

In § 146.1, the term *H5/H7 low pathogenic avian influenza (LPAI)* is defined as follows: "An infection of poultry caused by an influenza A virus of H5 or H7 subtype that has an intravenous pathogenicity index test in 6-week-old chickens less than 1.2 or any infection with influenza A viruses of H5 or H7 subtype for which nucleotide sequencing has not demonstrated the presence of multiple basic amino acids at the cleavage site of the hemagglutinin."

We added this definition to the regulations in an interim rule effective and published in the **Federal Register** on September 26, 2006 (71 FR 53601-56333, Docket No. APHIS-2005-0109). It was based on the OIE guidelines for AI that were current at the time of publication.

Since then, the OIE has updated its AI guidelines, including the definition of H5/H7 LPAI. To ensure that our regulations continue to be consistent with the OIE guidelines, we are proposing to update the definition of H5/H7 LPAI. The new definition would read: "An infection of poultry caused by an influenza A virus of H5 or H7 subtype that has an intravenous pathogenicity index in 6-week-old chickens less than 1.2 or less than 75 percent mortality in 4- to 8-week-old chickens infected intravenously, or an infection with influenza A viruses of H5 or H7 subtype with a cleavage site that is not consistent with a previously identified highly pathogenic avian influenza virus." This change would keep the regulations up to date with international standards.

Addition of Provisions for Commercial Table-Egg Layer Pullets

Subpart B of part 146 (§§ 146.21 through 146.24) contains special provisions for commercial table-egg layer flocks. We are proposing to add provisions for commercial table-egg layer pullets to subpart B.

We would define a *table-egg layer pullet* in § 146.21 as a sexually immature domesticated chicken grown for the primary purpose of producing eggs for human consumption. By definition, because the table-egg layer pullet is not sexually mature, it cannot yet lay eggs. Pullets are typically less than 20 weeks of age. Table-egg layer pullets are moved to a layer house when they become sexually mature, after which they are called table-egg layers. The regulations in subpart B have focused on table-egg layer flocks themselves, but the introduction of table-egg layer pullets into a flock is a potential pathway for the introduction of diseases, particularly as table-egg layer flocks are often assembled from multiple pullet sources. Thus, we are proposing to include provisions in the special provisions for commercial table-egg layers in subpart B of part 146 to address the table-egg layer pullets that will ultimately be moved onto the table-egg layer premises.

In addition, the definition of *commercial table-egg layer flock* in § 146.1 reads: "All table-egg layers of one classification in one barn or house." We are proposing to replace this with a new definition: "All table-egg layers of common age or pullet source on one premises." Table-egg layer flocks are normally composed of birds of common age or pullet source, but the birds may be in one house or multiple houses; older table-egg layer premises are more likely to have one flock spread across multiple houses. By removing the requirement that a flock be contained in a single barn or house and instead designating a flock as a group of table-egg layers of common age or pullet source, we would more accurately reflect the organization of table-egg layer flocks. We would retain the definition of *commercial table-egg layer premises* in § 146.1, which indicates that a premises includes all contiguous flocks of commercial table-egg layers under common ownership, to reflect the fact that a commercial table-egg layer premises may comprise many individual flocks.

We would also add a definition of *commercial table-egg layer pullet flock* to § 146.1. This definition would read as follows: "A table-egg layer flock prior to the onset of egg production."

In § 146.23, paragraph (a) sets out the requirements of the U.S. H5/H7 Avian Influenza Monitored program for commercial table-egg layers. The introductory text of this paragraph states that this program is intended to be the basis from which the table-egg layer industry may conduct a program to monitor for the H5/H7 subtypes of AI. It is intended to determine the presence of the H5/H7 subtypes of AI in table-egg layers through routine serological surveillance of each participating commercial table-egg layer flock.

We are proposing to amend this discussion to refer to commercial table-egg layer pullet flocks as well as commercial table-egg layer flocks. We are also proposing to remove the reference to serological testing specifically, for reasons similar to those given earlier for removing the specific references to serological testing from the U.S. H5/H7 Avian Influenza Clean classification for turkey breeding flocks and for waterfowl, exhibition poultry, and game bird breeding flocks.

Within paragraph (a), paragraphs (a)(1), (a)(2), and (a)(3) set out the requirements for surveillance of commercial table-egg layers. We are proposing to add a new paragraph (a)(1) with requirements for table-egg layer pullet flocks and redesignate current (a)(1), (a)(2), and (a)(3) as paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii). In those paragraphs, we would remove references to testing negative for antibodies to H5/H7 AI and instead refer simply to testing negative for H5/H7 AI, for the reasons mentioned earlier with regard to similar changes to the U.S. H5/H7 Avian Influenza Clean classification for turkey breeding flocks. We would also remove the current references to testing egg samples and add references to the official AI tests in § 146.13(b), for the reasons mentioned earlier with regard to similar changes to the U.S. H5/H7 Avian Influenza Clean classification for waterfowl, game bird, and exhibition poultry breeding flocks.

Proposed paragraph (a)(1) would provide two options by which table-egg layer pullet flocks could qualify for the U.S. H5/H7 Avian Influenza Monitored classification. Such a flock would qualify if:

- It is a commercial table-egg layer pullet flock in which a minimum of 11 birds have been tested negative to the H5/H7 subtypes of AI as provided in § 146.13(b) within 30 days prior to movement; or
- It is a commercial table-egg layer pullet flock that has an ongoing active and diagnostic surveillance program for the H5/H7 subtypes of AI which the number of birds tested is equivalent to the number required in the other option and that is approved by the Official State Agency and the Service.

Any ongoing active and diagnostic surveillance program that is approved by the Official State Agency and APHIS would have to test a number of birds equivalent to the first requirement, but this by itself would not be sufficient to secure approval for the program; the Official State Agency and APHIS would have to agree that the detailed testing

plan for the alternate program is sufficient to establish a level of confidence for the detection of AI that is equivalent to that of the first requirement. Allowing participating flocks to develop an alternative ongoing active and diagnostic surveillance program of equivalent efficacy would give the flock owners some flexibility.

In § 146.24, paragraph (a) sets out the provisions for the U.S. H5/H7 Avian Influenza Monitored State, Layers classification. We would amend these provisions to indicate that this classification also includes table-egg layer pullet flocks. Under paragraph (a)(1)(i), in order for a State to qualify for the U.S. H5/H7 Avian Influenza Monitored State, Layers classification, all the commercial table-egg layer flocks that are not exempt from the special provisions of subpart B under § 146.22 and all the commercial table-egg layer pullet flocks that supply those flocks within the State would have to be classified as U.S. H5/H7 Avian Influenza Monitored under § 146.23(a). Requirements for specimen reporting and subtyping in paragraphs (a)(1)(iii) and (a)(1)(iv) would also apply to commercial table-egg layer pullet flocks as well as commercial table-egg layer flocks. Finally, under paragraph (a)(1)(v), all table-egg layer pullet flocks within the State that are found to be infected with H5/H7 AI would have to be quarantined, in accordance with an initial State response and containment plan as described in 9 CFR part 56 and under the supervision of the Official State Agency, the same as is currently required for table-egg layer flocks.

These changes would expand the reach of the U.S. H5/H7 Avian Influenza Monitored classification for commercial table-egg layers and make it more effective.

Testing Procedures for Other U.S. H5/H7 Avian Influenza Monitored Classifications in Part 146

Within part 146, § 146.33 contains the requirements for the U.S. H5/H7 Avian Influenza Monitored classification for meat-type chicken slaughter plants, § 146.43 contains the requirements for that classification for meat-type turkey slaughter plants, § 146.53(a) contains the requirements for commercial waterfowl and commercial upland game bird slaughter plants, and § 146.53(b) contains the requirements for raised-for-release upland game birds and raised-for-release waterfowl. Similar to other classifications discussed earlier in this proposal, all of these classifications contain testing requirements for H5/H7 LPAI but do not specify that testing must be conducted as provided in § 146.13(b), which contains the official AI tests for part 146. We are proposing to amend these requirements to indicate that birds must be tested for these classifications as provided in § 146.13(b). In addition, we are proposing to remove a reference to testing for antibodies to H5/H7 LPAI in § 146.53(a)(2), for reasons identical to those given for similar changes described earlier in this document.

Shoe Cover Sampling Technique for Collection of Salmonella Samples

Section 147.12 sets out procedures for collection, isolation, and identification of *Salmonella* from environmental samples, cloacal swabs, chick box papers, and meconium samples. Paragraph (a) of § 147.12 sets out procedures specific to egg- and meat-type chickens, waterfowl, exhibition poultry, and game birds. This paragraph includes various methods for collecting samples and a procedure for testing chick meconium.

We are proposing to add a new sampling technique in a proposed new paragraph (a)(6). This technique uses absorbable shoe covers to collect samples. Absorbable fabric shoe covers involve the exposure of the bottom surface of shoe covers to the surface of floor litter and slat areas. The shoe cover sampling technique would involve wearing clean latex gloves and placing the shoe covers over footwear that is only worn inside the poultry house. This could be footwear dedicated to the facility or disposable overshoes. Each pair of shoe covers would be worn while walking at a normal pace over a distance of 305 meters (1000 feet). For flocks with fewer than 500 breeders, at least 1 pair of shoe covers would be worn to sample the floor of the bird area. For flocks with 500 or more breeders, at least 2 pairs of shoe covers would be worn to sample the floor of the bird area. After sampling, each shoe cover would be placed in a sterile container with 30 ml of double strength skim milk, to protect *Salmonella* viability during storage and shipment. The sterile containers would have to be sealed and promptly refrigerated at 2 to 4 °C or place in a cooler with ice or ice packs, but not frozen. Samples would have to be stored at refrigerator temperatures of 2 to 4 °C no more than 5 days prior to culturing.

This procedure would provide an effective alternative means to collect *Salmonella* samples in poultry houses.

Approved Tests

Within § 147.52, paragraph (b) sets out a procedure by which diagnostic test kits that are not licensed by APHIS (e.g., bacteriological culturing kits) may be approved for use in the NPIP. We are proposing to list in a new paragraph (c) in § 147.52 the test kits that have been approved through this process. These are the test kits we are proposing to list:

- Rapid Chek©Select TMSalmonella Test Kit, Strategic Diagnostics, Inc. Newark, DE 19713.
- ADIAFOOD Rapid Pathogen Detection System for *Salmonella* spp., AES Chemunex Canada. Laval, QC (Canada) H7L4S3.
- DuPont Qualicon BAX Polymerase Chain Reaction (PCR)-based assay for *Salmonella*, DuPont Qualicon, Wilmington, DE 19810.

Updates

The regulations in § 145.10 provide for the use of certain terms and illustrative designs to designate participants in NPIP programs for breeding poultry; the regulations in § 146.9 do the same for commercial poultry. Both of these sections refer to certain subparts of parts 145 and 146, respectively, that include provisions for the programs; § 145.10 refers to subparts B, C, D, E, and F, while § 146.9 refers to subparts B, C, and D. However, these lists do not include subparts that have been added recently: Subparts G and H in part 145 and subpart E in part 146. To correct the errors and ensure that the regulations accommodate the addition of future subparts, we are removing the lists of subparts from §§ 145.10 and 146.9 and instead referring generally to parts 145 and 146, respectively.

Within §§ 145.10 and 146.9, we are also updating the lists of classifications eligible to use the various illustrative designs. These lists have become out of date as well.

Section 147.45, "Official delegates," provides that each cooperating State shall be entitled to one official delegate to the Plan Conference for each of the programs prescribed in subparts B, C, D, E, F, G, and H of part 145 and for each of the programs prescribed in subparts B, C, D, and E of part 146 in which it has one or more participants at the time of the conference. Rather than proposing to update this list to reflect the proposed addition of a new subpart I in part 145, we are proposing to simply refer to each of the programs prescribed in parts 145 and 146, generally. In both parts 145 and 146, subpart A sets out general provisions for participation in the NPIP, but not specific programs; thus, referring generally to the programs prescribed in parts 145 and 146 includes all the necessary programs. Making this change would simplify the regulations.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

This rule would introduce a set of minor changes to the NPIP and would not involve significant changes in program operations. These changes are in line with the industry's best practices and would likely involve no additional costs in order to meet these requirements. Additionally, the NPIP is a voluntary program established between the industry and State and Federal governments. Any person producing or dealing in products may participate in the NPIP when he or she has demonstrated that his or her facilities, personnel, and practices are adequate for carrying out the applicable provisions of the NPIP. NPIP participation allows for greater ease in moving hatching eggs, live birds, and commercial poultry products within a State, across State lines, and into other countries. Most countries will not accept hatching eggs, live birds, or commercial poultry products from a U.S. operation unless it can be shown to be an NPIP participant. The poultry industry plays an important role in the U.S. economy, and the proposed amendments would help to ensure the safety of the industry and benefit the economy.

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

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) No retroactive effect will be given to this rule; and (2) 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

9 CFR Part 56

Animal diseases, Indemnity payments, Low pathogenic avian influenza, Poultry.

9 CFR Parts 145, 146, and 147

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

■ Accordingly, we propose to amend 9 CFR parts 56, 145, 146, and 147 as follows:

PART 56—CONTROL OF H5/H7 LOW PATHOGENIC AVIAN INFLUENZA

■ 1. The authority citation for 9 CFR part 56 continues to read as follows:

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

■ 2. Section 56.1 is amended as follows:

■ a. By removing the definitions of *commercial meat-type flock*, *commercial table-egg layer flock*, *commercial table-egg layer premises*, *meat-type chicken*, and *meat-type turkey*.

■ b. By adding a definition of *commercial flock or slaughter plant*, in alphabetical order, to read as set forth below.

§ 56.1 Definitions.

* * * * *

Commercial flock or slaughter plant. A commercial poultry flock or slaughter plant that is required because of its size to participate in the special provisions in part 146 of this chapter in order to participate in the Plan.

* * * * *

■ 3. Section 56.3 is amended as follows:

■ a. In paragraph (b) introductory text, by removing the word "(b)(7)" each time it occurs and adding the word "(b)(3)" in its place.

■ b. By revising paragraphs (b)(1) and (b)(2) to read as set forth below.

■ c. By removing paragraphs (b)(4) through (b)(6).

■ d. By redesignating paragraph (b)(7) as paragraph (b)(3).

§ 56.3 Payment of indemnity.

* * * * *

(b) * * *

(1) The poultry are from a breeding flock that participates in any Plan program in part 145 of this chapter but that does not participate in the U.S. Avian Influenza Clean or the U.S. H5/H7 Avian Influenza Clean program of the Plan available to the flock in part 145 of this chapter; or

(2) The poultry are from a commercial flock or slaughter plant, but the flock or slaughter plant does not participate in the U.S. Avian Influenza Monitored program available to the commercial flock or slaughter plant in part 146 of this chapter; or

* * * * *

PART 145–NATIONAL POULTRY IMPROVEMENT PLAN FOR BREEDING POULTRY

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

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

■ 5. Section 145.1 is amended by adding, in alphabetical order, a new definition of *avian influenza* to read as set forth below.

§ 145.1 Definitions.

* * * * *

Avian influenza. An infection or disease of poultry caused by viruses in the family *Orthomyxoviridae*, genus *Influenzavirus* A.

* * * * *

■ 6. Section 145.10 is amended as follows:

■ a. By revising the introductory text to read as set forth below.

■ b. In paragraph (r), by removing the words "and 145.53(e)" and adding the words "145.63(b), 145.73(f), and 145.83(g)" in their place.

■ c. In paragraph (t), by removing the citation "§ 145.43(g)" and adding the words "§§ 145.43(g), 145.53(e), and 145.93(b)" in its place.

§ 145.10 Terminology and classification; flocks, products, and States.

Participating flocks, products produced from them, and States that have met the requirements of a classification in this part may be designated by the corresponding illustrative design in this section.

* * * * *

■ 7. Section 145.14 is amended as follows:

■ a. In the introductory text, in the first sentence, by removing the word "blood" each time it occurs.
■ b. In the introductory text, in the second sentence, by removing the words "Blood samples" and adding the word "Samples" in its place; and by removing the word "drawn" and adding the word "collected" in its place.
■ c. By revising the introductory text of paragraph (b) and paragraph (b)(1) to read as set forth below.
■ d. In paragraph (b)(2), by adding the word "serological" before the word "tests"; and by adding the words ", *M. meleagridis*," after the word "*gallisepticum*".
■ e. By revising paragraph (b)(5) to read as set forth below.
■ f. By removing and reserving paragraph (c).

§ 145.14 Testing.

* * * * *

(b) *For Mycoplasma gallisepticum, M. meleagridis, and M. synoviae.* (1) The official blood tests for *M. gallisepticum*, *M. meleagridis*, and *M. synoviae* shall be the serum plate agglutination test, the tube agglutination test, the hemagglutination inhibition (HI) test, the microhemagglutination inhibition test, the enzyme-linked immunosorbent assay (ELISA) test,[3] a PCR-based test, or a combination of two or more of these tests. The HI test or the microhemagglutination inhibition test shall be used to confirm the positive results of other serological tests. HI titers of 1:40 or more may be interpreted as suspicious, and final judgment must be based on further samplings and/or culture of reactors.

* * * * *

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

* * * * *

■ 8. Section 145.23 is amended as follows:
■ a. In paragraph (b)(2)(iii), in the first sentence, by removing the words "either no poultry or", and by removing the word "were" and adding the word "was" in its place.
■ b. In paragraph (h) introductory text, by removing the words "serological" and "one of".
■ c. By adding a new paragraph (h)(1) and revising paragraph (h)(2) to read as set forth below.

§ 145.23 Terminology and classification; flocks and products.

* * * * *

(h) * * *

(1) It is a multiplier breeding flock in which a minimum of 30 birds have been tested negative for antibodies to avian influenza when more than 4 months of age. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 90 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 90-day period; or

(iii) The flock is tested as provided in § 145.14(d) at intervals of 30 days or less and found to be negative, and a total of 30 samples are collected and tested within each 90-day period; and

(2) During each 90-day period, all multiplier spent fowl, up to a maximum of 30, must be tested and found negative within 21 days prior to movement to slaughter.

* * * * *

§ 145.24 [Amended]

■ 9. In § 145.24, paragraph (a)(1)(i) is amended by removing the word "and" and by adding the words ", and § 145.93(b)(3)(i) through (vii)" before the period at the end of the paragraph.

■ 10. Section 145.33 is amended as follows:
■ a. In paragraph (b)(2)(iii), in the first sentence, by removing the words "either no poultry or", and by removing the word "were" and adding the word "was" in its place.
■ b. In paragraph (l) introductory text, by removing the words "serological" and "one of".
■ c. By adding a new paragraph (l)(1) and revising paragraph (l)(2) to read as set forth below.

§ 145.33 Terminology and classification; flocks and products.

* * * * *

(l) * * *

(1) It is a multiplier breeding flock in which a minimum of 30 birds have been tested negative for antibodies to avian influenza when more than 4 months of age. To retain this classification:

(i) A sample of at least 15 birds must be tested negative at intervals of 90 days; or

(ii) A sample of fewer than 15 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 90-day period; or

(iii) The flock is tested as provided in § 145.14(d) at intervals of 30 days or less and found to be negative, and a total of 15 samples are collected and tested within each 90-day period; and

(2) During each 90-day period, all multiplier spent fowl, up to a maximum of 30, must be tested and found negative within 21 days prior to movement to slaughter.

* * * * *

§ 145.34 [Amended]

■ 11. In § 145.34, paragraph (a)(1)(i) is amended by removing the word "and" and by adding the words ", and § 145.93(b)(3)(i) through (vii)" before the period at the end of the paragraph.

■ 12. Section 145.43 is amended as follows:
■ a. In paragraph (b)(2)(iii), in the first sentence, by removing the words "either no poultry or", and by removing the word "were" and adding the word "was" in its place.
■ b. By removing and reserving paragraphs (d)(2) and (d)(3).
■ c. In paragraph (f)(5), by redesignating footnote 6 as footnote 5.
■ d. In paragraph (g) introductory text, by removing the words "H5 and H7" and adding the word "H5/H7" in their place each time they appear; and by removing the word "serological".
■ e. By revising paragraph (g)(1) introductory text and paragraph (g)(2) introductory text to read as set forth below.
■ f. In paragraphs (g)(1)(i) and (g)(2)(i), by removing the words "*Provided*, that primary spent fowl be tested within 30 days prior to movement to disposal;".
■ g. By redesignating paragraph (g)(3) as paragraph (g)(4).
■ h. By adding a new paragraph (g)(3) to read as set forth below.

§ 145.43 Terminology and classification; flocks and products.

* * * * *

(g) * * *

(1) It is a primary breeding flock in which a minimum of 30 birds have been tested negative to the H5/H7 subtypes of avian influenza as provided in

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[3] Procedures for the enzyme-linked immunosorbent assay (ELISA) test are set forth in the following publications:

A.A. Ansari, R.F. Taylor, T.S. Chang, "Application of Enzyme-Linked Immunosorbent Assay for Detecting Antibody to Mycoplasma gallisepticum Infections in Poultry," *Avian Diseases*, Vol. 27, No. 1, pp. 21–35, January-March 1983; and

H.M. Opitz, J.B. Duplessis, and M.J. Cyr, "Indirect Micro-Enzyme-Linked Immunosorbent Assay for the Detection of Antibodies to Mycoplasma synoviae and M. gallisepticum," *Avian Diseases*, Vol. 27, No. 3, pp. 773–786, July-September 1983; and

H.B. Ortmayer and R. Yamamoto, "Mycoplasma Meleagridis Antibody Detection by Enzyme-Linked Immunosorbent Assay (ELISA)," *Proceedings, 30th Western Poultry Disease Conference*, pp. 63–66, March 1981.

§ 145.14(d) when more than 4 months of age and prior to the onset of egg production. To retain this classification:

* * * * *

(2) It is a multiplier breeding flock in which a minimum of 30 birds have been tested negative to the H5/H7 subtypes of avian influenza as provided in § 145.14(d) when more than 4 months of age and prior to the onset of egg production. To retain this classification:

* * * * *

(3) During each 90-day period, all spent fowl, up to a maximum of 30, must be tested and found negative within 21 days prior to movement to slaughter.

§ 145.44 [Amended]

■ 13. In § 145.44, paragraph (a)(1)(i) is amended by removing the word "and"; and by adding the words ", § 145.73(b)(2)(i), § 145.83(b)(2)(i), and § 145.93(b)(3)(i) through (vii)" before the period at the end of the paragraph.

Subpart E—Special Provisions for Hobbyist and Exhibition Waterfowl, Exhibition Poultry, and Game Bird Breeding Flocks and Products

■ 14. The heading for subpart E is revised to read as set forth above.

■ 15. In § 145.52, the introductory text is revised to read as follows:

§ 145.52 Participation.

Participating flocks of hobbyist and exhibition waterfowl, exhibition poultry, and game birds, and the eggs and baby poultry produced from them shall comply with the applicable general provisions of subpart A of this part and the special provisions of this subpart E. The special provisions that apply to meat-type waterfowl flocks are found in subpart I of this part.

* * * * *

■ 16. Section 145.53 is amended as follows:

■ a. In paragraph (b)(2)(iii), in the first sentence, by removing the words "either no poultry or", and by removing the word "were" and adding the word "was" in its place.

■ b. In paragraph (b)(5), by adding the words "hobbyist or exhibition" before the word "waterfowl".

■ c. In paragraph (e) in the introductory text, second sentence, by adding the words "hobbyist or exhibition" before the word "waterfowl"; and by removing the word "serological".

■ d. In the introductory text of paragraph (e)(1), by removing the words "for antibodies"; and by removing the words "by the agar gel immunodiffusion test specified in § 147.9 of this chapter" and adding the words "as provided in § 145.14(d)" in their place.

■ e. In the introductory text of paragraph (e)(2), by removing the words "for antibodies"; and by removing the words "by the agar gel immunodiffusion test specified in § 147.9 of this chapter" and adding the words "as provided in § 145.14(d)" in their place.

■ f. By adding a new paragraph (e)(3) to read as set forth below.

§ 145.53 Terminology and classification; flocks and products.

* * * * *

(e) * * *

(3) During each 90-day period, all spent fowl, up to a maximum of 30, must be tested and found negative within 21 days prior to movement to slaughter.

§ 145.54 [Amended]

■ 17. In § 145.54, paragraph (a)(1)(i) is amended by removing the word "and"; and by adding the words ", § 145.73(b)(2)(i), § 145.83(b)(2)(i), and § 145.93(b)(3)(i) through (vii)" before the period at the end of the paragraph.

■ 18. In § 145.73, paragraph (f) is amended as follows:

■ a. In the introductory text, second sentence, by removing the word "serological."

■ b. By revising paragraph (f)(1) and adding a new paragraph (f)(2) to read as set forth below.

§ 145.73 Terminology and classification; flocks and products.

* * * * *

(f) * * *

(1) It is a primary breeding flock in which a minimum of 30 birds have been tested negative for antibodies to avian influenza when more than 4 months of age. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 90 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 90-day period; or

(iii) The flock is tested as provided in § 145.14(d) at intervals of 30 days or less and found to be negative, and a total of 30 samples are collected and tested within each 90-day period; and

(2) During each 90-day period, all primary spent fowl, up to a maximum of 30, must be tested serologically and found negative within 21 days prior to movement to slaughter.

■ 19. Section 145.83 is amended as follows:

■ a. In paragraph (f)(1)(vi), by removing the semicolon at the end of the paragraph and adding a period in its place; and by adding a new sentence at the end of the paragraph to read as set forth below.

■ b. In paragraph (f)(1)(vii), by adding the words "to allow for the serological testing required under paragraph (f)(1)(vi) of this section" after the word "age".

■ c. By adding a new paragraph (f)(1)(viii) to read as set forth below.

■ d. In paragraph (f)(3), by removing the words "this classification" and adding the words "paragraphs (f)(1)(i) through (f)(1)(vii) of this section" in their place.

■ e. In the introductory text of paragraph (g), second sentence, by removing the word "serological."

■ f. By revising paragraph (g)(1) and adding a new paragraph (g)(2) to read as set forth below.

§ 145.83 Terminology and classification; flocks and products.

* * * * *

(f) * * *

(1) * * *

(vi) * * *All salmonella isolates from a flock shall be serogrouped and shall be reported to the Official State Agency on a monthly basis;

* * * * *

(viii) Any flock entering the production period that is in compliance with all the requirements of § 145.83(f) with no history of Salmonella isolations shall be considered "Salmonella negative" and may retain this definition as long as no environmental or bird salmonella isolations are identified and confirmed from the flock or flock environment by sampling on 4 separate collection dates over a minimum of a 2-week period. Sampling and testing must be performed as described in paragraph (f)(1)(vi) of this section. An unconfirmed environmental *Salmonella* isolation shall not change this Salmonella negative status.

* * * * *

(g) * * *

(1) It is a primary breeding flock in which a minimum of 30 birds have been tested negative for antibodies to avian influenza when more than 4 months of age. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 90 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 90-day period; or

(iii) The flock is tested as provided in § 145.14(d) at intervals of 30 days or less and found to be negative, and a total of 30 samples are collected and tested within each 90-day period; and

(2) During each 90-day period, all primary spent fowl, up to a maximum of 30, must be tested serologically and found negative within 21 days prior to movement to slaughter.

■ 20. A new subpart I, consisting of §§ 145.91 through 145.94, is added to read as follows:

Subpart I— Special Provisions for Meat-Type Waterfowl Breeding Flocks and Products

Sec.
145.91 Definitions.
145.92 Participation.
145.93 Terminology and classification; flocks and products.
145.94 Terminology and classification; States.

Subpart I— Special Provisions for Meat-Type Waterfowl Breeding Flocks and Products

§ 145.91 Definitions.

Except where the context otherwise requires, for the purposes of this subpart the following term shall be construed to mean:

Meat-type waterfowl breeding flocks. Flocks of domesticated duck or goose that are composed of stock that has been developed and is maintained for the primary purpose of producing baby poultry that will be raised under confinement for the primary purpose of producing meat for human consumption.

§ 145.92 Participation.

Participating flocks of meat-type waterfowl and the eggs and baby poultry produced from them shall comply with the applicable general provisions of subpart A of this part and the special provisions of this subpart I.

(a) Started poultry shall lose their identity under Plan terminology when not maintained by Plan participants under the conditions prescribed in § 145.5(a).

(b) Hatching eggs produced by primary breeding flocks shall be fumigated (see § 147.25 of this chapter) or otherwise sanitized.

(c) Any nutritive material provided to baby poultry must be free of the avian pathogens that are officially represented in the Plan disease classifications listed in § 145.10.

§ 145.93 Terminology and classification; flocks and products.

Participating flocks, and the eggs and baby poultry produced from them, that have met the respective requirements specified in this section may be designated by the following terms and the corresponding designs illustrated in § 145.10.

(a) [Reserved]

(b) *U.S. Pullorum-Typhoid Clean.* A flock in which freedom from pullorum and typhoid has been demonstrated to the Official State Agency under the criteria in one of the following paragraphs (b)(1) through (b)(5) of this section (See § 145.14 relating to the official blood test where applicable.):

(1) It has been officially blood tested within the past 12 months with no reactors.

(2) It is a multiplier breeding flock, or a breeding flock composed of progeny of a primary breeding flock which is intended solely for the production of multiplier breeding flocks, and meets the following specifications as determined by the Official State Agency and the Service:

(i) The flock is located in a State where all persons performing poultry disease diagnostic services within the State are required to report to the Official State Agency within 48 hours the source of all poultry specimens from which *S. pullorum* or *S. gallinarum* is isolated;

(ii) The flock is composed entirely of birds that originated from U.S. Pullorum-Typhoid Clean breeding flocks or from flocks that met equivalent requirements under official supervision; and

(iii) The flock is located on a premises where a flock not classified as U.S. Pullorum-Typhoid Clean was located the previous year; *Provided*, that an Authorized Testing Agent must blood test up to 300 birds per flock, as described in § 145.14, if the Official State Agency determines that the flock has been exposed to pullorum-typhoid. In making determinations of exposure and setting the number of birds to be blood tested, the Official State Agency shall evaluate the results of any blood tests, described in § 145.14(a)(1), that were performed on an unclassified flock located on the premises during the previous year; the origins of the unclassified flock; and the probability of contacts between the flock for which qualification is being sought and infected wild birds, contaminated feed or waste, or birds, equipment, supplies, or personnel from flocks infected with pullorum-typhoid.

(3) It is a multiplier breeding flock that originated from U.S. Pullorum-Typhoid Clean breeding flocks or from flocks that met equivalent requirements under official supervision, and is located in a State in which it has been determined by the Service that:

(i) All hatcheries within the State are qualified as "National Plan Hatcheries" or have met equivalent requirements for pullorum-typhoid control under official supervision;

(ii) All hatchery supply flocks within the State are qualified as U.S. Pullorum-Typhoid Clean or have met equivalent requirements for pullorum-typhoid control under official supervision: *Provided*, That if other domesticated fowl are maintained on the same premises as the participating flock, freedom from pullorum-typhoid infection shall be demonstrated by an official blood test of each of these fowl;

(iii) All shipments of products other than U.S. Pullorum-Typhoid Clean, or equivalent, into the State are prohibited;

(iv) All persons performing poultry disease diagnostic services within the State are required to report to the Official State Agency within 48 hours the source of all poultry specimens from which *S. pullorum* or *S. gallinarum* is isolated;

(v) All reports of any disease outbreak involving a disease covered under the Plan are promptly followed by an investigation by the Official State Agency to determine the origin of the infection; *Provided*, That if the origin of the infection involves another State, or if there is exposure to poultry in another State from the infected flock, then the National Poultry Improvement Plan will conduct an investigation;

(vi) All flocks found to be infected with pullorum or typhoid are quarantined until marketed or destroyed under the supervision of the Official State Agency, or until subsequently blood tested, following the procedure for reacting flocks as contained in § 145.14(a)(5), and all birds fail to demonstrate pullorum or typhoid infection;

(vii) All poultry, including exhibition, exotic, and game birds, but excluding waterfowl, going to public exhibition shall come from U.S. Pullorum-Typhoid Clean or equivalent flocks, or have had a negative pullorum-typhoid test within 90 days of going to public exhibition;

(viii) Discontinuation of any of the conditions or procedures described in paragraphs (a)(3)(i), (ii), (iii), (iv), (v), (vi), and (vii) of this section, or the occurrence of repeated outbreaks of pullorum or typhoid in poultry breeding flocks within or originating within the State shall be grounds for the Service to revoke its determination that such conditions and procedures have been met or complied with. Such action shall not be taken until a thorough investigation has been made by the Service and the Official State Agency has been given an opportunity to present its views.

(4) It is a multiplier breeding flock located in a State which has been determined by the Service to be in compliance with the provisions of

paragraph (a)(3) of this section, and in which pullorum disease or fowl typhoid is not known to exist nor to have existed in hatchery supply flocks within the State during the preceding 24 months.

(5) It is a primary breeding flock located in a State determined to be in compliance with the provisions of paragraph (a)(4) of this section, and in which a sample of 300 birds from flocks of more than 300, and each bird in flocks of 300 or less, has been officially tested for pullorum-typhoid within the past 12 months with no reactors: *Provided*, That when a flock is a primary breeding flock located in a State which has been deemed to be a U.S. Pullorum-Typhoid Clean State for the past 3 years, and during which time no isolation of pullorum or typhoid has been made that can be traced to a source in that State, a bacteriological examination monitoring program or a serological examination monitoring program acceptable to the Official State Agency and approved by the Service may be used in lieu of annual blood testing.

(c) *U.S. H5/H7 Avian Influenza Clean.* This program is intended to be the basis from which the breeding-hatchery industry may conduct a program for the prevention and control of the H5/H7 subtypes of avian influenza. It is intended to determine the presence of the H5/H7 subtypes of avian influenza in meat-type waterfowl breeding flocks through routine surveillance of each participating breeding flock. A flock, and the hatching eggs and baby poultry produced from it, will qualify for this classification when the Official State Agency determines that it has met one of the following requirements:

(1) It is a primary breeding flock in which a minimum of 30 birds have been tested negative to the H5/H7 subtypes of avian influenza as provided in § 145.14(d) when more than 4 months of age. To retain this classification:

(i) A sample of at least 30 birds must be tested and found to be negative at intervals of 90 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds are tested within each 90-day period.

(2) It is a multiplier breeding flock in which a minimum of 30 birds have been tested negative to the H5/H7 subtypes of avian influenza as provided in § 145.14(d) when more than 4 months of age. To retain this classification:

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

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

(3) During each 90-day period, all spent fowl, up to a maximum of 30, must be tested serologically and found negative within 21 days prior to movement to slaughter.

§ 145.94 Terminology and classification; States.

(a) *U.S. Pullorum-Typhoid Clean State.* (1) A State will be declared a U.S. Pullorum-Typhoid Clean State when it has been determined by the Service that:

(i) The State is in compliance with the provisions contained in §§ 145.23(b)(3)(i) through (vii), 145.33(b)(3)(i) through (vii), 145.43(b)(3)(i) through (vi), 145.53(b)(3)(i) through (vii), 145.73(b)(2)(i), 145.83(b)(2)(i), and 145.93(b)(3)(i) through (vii).

(ii) No pullorum disease or fowl typhoid is known to exist nor to have existed in hatchery supply flocks within the State during the preceding 12 months: *Provided*, That pullorum disease or fowl typhoid found within the preceding 24 months in waterfowl, exhibition poultry, and game bird breeding flocks will not prevent a State that is otherwise eligible from qualifying.

(2) Discontinuation of any of the conditions described in paragraph (a)(1)(i) of this section, or repeated outbreaks of pullorum or typhoid occur in hatchery supply flocks described in paragraph (a)(1)(ii) of this section, or if an infection spreads from the originating premises, the Service shall have grounds to revoke its determination that the State is entitled to this classification. Such action shall not be taken until a thorough investigation has been made by the Service and the Official State Agency has been given an opportunity for a hearing in accordance with rules of practice adopted by the Administrator.

(b) [Reserved]

PART 146–NATIONAL POULTRY IMPROVEMENT PLAN FOR COMMERCIAL POULTRY

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

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

■ 22. Section 146.1 is amended as follows:

■ a. By revising the definitions of *commercial table-egg layer flock* and *H5/H7 low pathogenic avian influenza (LPAI)* to read as set forth below.

■ b. By adding a new definition of *commercial table-egg layer pullet flock* to read as set forth below.

§ 146.1 Definitions.

* * * * *

Commercial table-egg layer flock. All table-egg layers of common age or pullet source on one premises.

* * * * *

Commercial table-egg layer pullet flock. A table-egg layer flock prior to the onset of egg production.

* * * * *

H5/H7 low pathogenic avian influenza (LPAI) . An infection of poultry caused by an influenza A virus of H5 or H7 subtype that has an intravenous pathogenicity index in 6-week-old chickens less than 1.2 or less than 75 percent mortality in 4- to 8-week-old chickens infected intravenously, or an infection with influenza A viruses of H5 or H7 subtype with a cleavage site that is not consistent with a previously identified highly pathogenic avian influenza virus.

* * * * *

■ 23. Section 146.9 is amended as follows.

■ a. By revising the introductory text to read as set forth below.

■ b. In paragraph (a), by removing the word "and" and by adding the words ", and 146.53(a)" before the period.

§ 146.9 Terminology and classification; flocks, products, and States.

Participating flocks, products produced from them, and States that have met the requirements of a classification in this part may be designated by the corresponding illustrative design in this section.

* * * * *

■ 24. Section 146.21 is amended by adding a new definition of *table-egg layer pullet* to read as set forth below.

§ 146.21 Definitions.

* * * * *

Table-egg layer pullet. A sexually immature domesticated chicken grown for the primary purpose of producing eggs for human consumption.

■ 25. In § 146.23, paragraph (a) is revised to read as follows:

§ 146.23 Terminology and classification; flocks and products.

* * * * *

(a) *U.S. H5/H7 Avian Influenza Monitored.* This program is intended to be the basis from which the table-egg layer industry may conduct a program to monitor for the H5/H7 subtypes of avian influenza. It is intended to determine the presence of the H5/H7

subtypes of avian influenza in table-egg layers and table-egg layer pullets through routine surveillance of each participating commercial table-egg layer and table-egg layer pullet flock. A flock will qualify for this classification when the Official State Agency determines that it has met one of the following requirements:

(1) *Table-egg layer pullet flocks.* (i) It is a commercial table-egg layer pullet flock in which a minimum of 11 birds have been tested negative to the H5/H7 subtypes of avian influenza as provided in § 146.13(b) within 30 days prior to movement; or

(ii) It is a commercial table-egg layer pullet flock that has an ongoing active and diagnostic surveillance program for the H5/H7 subtypes of avian influenza in which the number of birds tested is equivalent to the number required in paragraph (a)(1)(i) and that is approved by the Official State Agency and the Service.

(2) *Table-egg layer flocks.* (i) It is a commercial table-egg layer flock in which a minimum of 11 birds have been tested negative to the H5/H7 subtypes of avian influenza as provided in § 146.13(b) within 30 days prior to disposal;

(ii) It is a commercial table-egg layer flock in which a minimum of 11 birds have been tested negative for the H5/H7 subtypes of avian influenza as provided in § 146.13(b) within a 12-month period; or

(iii) It is a commercial table-egg layer flock that has an ongoing active and diagnostic surveillance program for the H5/H7 subtypes of avian influenza in which the number of birds tested is equivalent to the number required in paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section and that is approved by the Official State Agency and the Service.

* * * * *

§ 146.24 [Amended]

■ 26. Section 146.24 is amended as follows:

■ a. In paragraph (a)(1)(i), by adding the words "and all commercial table-egg layer pullet flocks that supply those flocks" after the word "flocks".

■ b. In paragraphs (a)(1)(iii) through (a)(1)(v), by adding the words "and table-egg layer pullet" after the word "layer" each time it occurs.

§ 146.33 [Amended]

■ 27. In § 146.33, paragraphs (a)(1) and (a)(2) are amended by adding the words ", as provided in § 146.13(b)," after the word "influenza," each time it occurs.

§ 146.43 [Amended]

■ 28. In § 146.43, paragraph (a)(1) is amended by adding the words ", as provided in § 146.13(b)," after the word "influenza" and by removing the word "virus".

§ 146.53 [Amended]

■ 29. Section 146.53 is amended as follows:

■ a. In paragraph (a)(1), by adding the words ", as provided in § 146.13(b)," after the word "influenza."

■ b. In paragraph (a)(2), by removing the words "antibodies to" and by adding the words ", as provided in § 146.13(b)," after the word "influenza."

■ c. In paragraph (b), in the last sentence, by adding the words ", as provided in § 146.13(b)," after the word "influenza."

PART 147–AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

■ 30. The authority citation for part 147 continues to read as follows:

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

■ 31. Section 147.6 is amended as follows:

■ a. By revising the introductory text and paragraphs (a)(1) through (a)(4) to read as set forth below.

■ b. By removing paragraphs (a)(5) through (a)(15).

§ 147.6 Procedures for determining the status of flocks reacting to test for Mycoplasma gallisepticum, Mycoplasma synoviae, and Mycoplasma melagridis.

Procedures for isolation and identification of Mycoplasma may be found in Isolation and Identification of Avian Pathogens, published by the American Association of Avian Pathologists; Kleven, S.H., F.T.W. Jordan, and J.M. Bradbury, *Avian Mycoplasmosis* (*Mycoplasma gallisepticum*), Manual of Diagnostic Tests and Vaccines for Terrestrial Animals, Fifth Ed., Office International des Epizooties, pp 842-855, 2004; and §§ 147.15 and 147.16.

(a) * * *

(1) If the tube agglutination test, enzyme-labeled immunosorbent assay (ELISA), official molecular examination procedure, or serum plate test is negative, the flock qualifies for the classification for which it was tested.

(2) If the tube agglutination, ELISA, or serum plate test is positive, the hemaglutination inhibition (HI) test or a molecular examination procedure shall be conducted: *Provided,* for the HI test, that if more than 50 percent of the samples are positive for *M. gallisepticum*, *M. meleagridis*, or *M. synoviae*, the HI test shall be conducted on 10 percent of the positive samples or 25 positive samples, whichever is greater. HI titers of 1:40 or more may be interpreted as suspicious and appropriate antigen detection samples should be taken promptly (within 7 days of the original sampling) from 30 clinically affected birds and examined by an approved cultural technique individually, or pooled (up to 5 swabs per test) and used in a molecular examination procedure or in vivo bioassay.

(3) If the in vivo bioassay, molecular examination procedure, or culture procedure is negative, the Official State Agency may qualify the flock for the classification for which it was tested. In the event of contaminated cultures, the molecular examination technique must be used to make a final determination.

(4) If the in vivo bioassay, molecular examination procedure, or culture procedure is positive, the flock will be considered infected.

* * * * *

§§ 147.12, 147.14, 147.15, 147.16, 147.30, and 147.31 [Amended]

■ 32. In §§ 147.12, 147.14, 147.15, 147.16, 147.30, and 147.31, footnotes 9 through 21 are redesignated as footnotes 10 through 22, respectively.

■ 33. Section 147.12 is amended by adding a new paragraph (a)(6) to read as follows:

§ 147.12 Procedures for collection, isolation, and identification of Salmonella from environmental samples, cloacal swabs, chick box papers, and meconium samples.

* * * * *

(a) * * *

(6) *Shoe cover sampling technique.* Absorbable fabric shoe covers involve the exposure of the bottom surface of shoe covers to the surface of floor litter and slat areas. Wearing clean latex gloves, place the shoe covers over footwear that is only worn inside the poultry house. This can be footwear dedicated to the facility or disposable overshoes. Each pair of shoe covers should be worn while walking at a normal pace over a distance of 305 meters (1000 feet). For flocks with fewer than 500 breeders, at least 1 pair of shoe covers should be worn to sample the floor of the bird area. For flocks with 500 or more breeders, at least 2 pairs of shoe covers should be worn to sample the floor of the bird area. After sampling, place each shoe cover in a sterile container with 30 ml of double

strength skim milk.[9] Seal the sterile containers and promptly refrigerate them at 2 to 4 °C or place in a cooler with ice or ice packs. Do not freeze. Samples should be stored at refrigerator temperatures of 2 to 4 °C no more than 5 days prior to culturing.

* * * * *

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

§ 147.45 Official delegates.

Each cooperating State shall be entitled to one official delegate for each of the programs prescribed in parts 145 and 146 of this chapter in which it has one or more participants at the time of the Conference. * * *

■ 35. In § 147.52, a new paragraph (c) is added to read as follows:

§ 147.52 Approved tests.

* * * * *

(c) The following diagnostic test kits that are not licensed by the Service (e.g., bacteriological culturing kits) are approved for use in the NPIP:

(1) Rapid Chek©Select TMSalmonella Test Kit, Strategic Diagnostics, Inc. Newark, DE 19713.

(2) ADIAFOOD Rapid Pathogen Detection System for *Salmonella* spp., AES Chemunex Canada. Laval, QC (Canada) H7L4S3.

(3) DuPont Qualicon BAX Polymerase Chain Reaction (PCR)-based assay for *Salmonella*, DuPont Qualicon, Wilmington, DE 19810.

Done in Washington, DC, this 13th day of September 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

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BILLING CODE: 3410–34–S

[9] Obtain procedure for preparing double strength skim milk from USDA-APHIS "Recommended Sample Collection Methods for Environmental Samples," available from the National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 200, Conyers, GA 30094.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0692; Airspace Docket No. 10–AEA–16]

Proposed Establishment of Class E Airspace; Crewe, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Crewe, VA, to accommodate the additional airspace needed for the Standard Instrument Approach Procedures (SIAPs) developed for Crewe Municipal Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before November 4, 2010.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–0692; Airspace Docket No. 10–AEA–16, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2010–0692; Airspace Docket No. 10–AEA–16) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Comments wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0692; Airspace Docket No. 10–AEA–16." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Crewe, VA to provide controlled airspace required to support the SIAPs developed for Crewe Municipal Airport. Class E airspace extending upward from 700 feet above the surface would be established for the safety and management of IFR operations.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9U, signed August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical