

§ 56.2

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flocks; cleaning and disinfection; downtime; and repopulation.

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 or equal to 1.2 or causes 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.

H5/H7 LPAI virus actively infected (infectious). (1) Poultry will be considered to be actively infected with H5/H7 LPAI for the purposes of this part if:

(i) H5/H7 LPAI virus has been isolated and identified as such from poultry; or

(ii) Viral antigen or viral RNA specific to the H5 or H7 subtype of AI virus has been detected in poultry.

(2) The official determination that H5/H7 LPAI virus has been isolated and identified, or viral antigen or viral RNA specific to the H5 or H7 subtype of AI virus has been detected, may only be made by the National Veterinary Services Laboratories.

H5/H7 LPAI virus exposed (non-infectious). (1) Poultry will be considered to be exposed (non-infectious) to H5/H7 LPAI for the purposes of this part if:

(i) Antibodies to the H5 or H7 subtype of the AI virus that are not a consequence of vaccination have been detected in poultry; and

(ii) Samples collected from the flock using real-time reverse transcription polymerase chain reaction (RT-PCR) or virus isolation are determined to be not infectious for H5/H7 LPAI.

(2) The official determination that H5/H7 LPAI virus exposure has occurred is by the identification of antibodies to the H5 or H7 subtype of AI virus detected and may only be made by the National Veterinary Services Laboratories.

Indemnity. Payments representing the fair market value of destroyed birds and eggs. Indemnity does not include reimbursements for depopulation, disposal, destroyed materials, or cleaning and disinfection (virus elimination) activities; these activities are

covered under compensation (see definition of *Compensation* in this section).

Mortgage. Any mortgage, lien, or other security or beneficial interest held by any person other than the one claiming indemnity for the destruction of poultry or eggs due to H5/H7 LPAI.

Official appraiser (APHIS official appraiser, State official appraiser). A person authorized by APHIS to appraise poultry for the purposes of this part. A State official appraiser is selected by a State and authorized by APHIS.

Official State Agency. The State authority recognized by the Department to cooperate in the administration of the Plan.

Plan. The provisions of the National Poultry Improvement Plan contained in parts 145, 146, and 147 of this chapter.

Poultry. Domesticated fowl, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds, except doves and pigeons, which are bred for the primary purpose of producing eggs or meat.

Secretary. The Secretary of the United States Department of Agriculture, or any officer or employee of the Department delegated to act in the Secretary's stead.

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

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

United States. All of the States.

Virus elimination (VE). Cleaning and disinfection measures conducted to destroy or eliminate all AI virus on an affected premises.

[71 FR 56323, Sept. 26, 2006, as amended at 75 FR 10656, Mar. 9, 2010; 76 FR 15792, Mar. 22, 2011; 79 FR 38753, July 9, 2014; 81 FR 53249, Aug. 12, 2016; 85 FR 62562, Oct. 5, 2020]

§ 56.2 Cooperation with States.

(a) The Administrator has been delegated the authority to cooperate with Cooperating State Agencies in the

eradication of H5/H7 LPAI. This cooperation may include, but is not necessarily limited to, the following activities:

(1) Payment to Cooperating State Agencies for surveillance and monitoring associated with poultry that have been infected with or exposed to H5/H7 LPAI;

(2) Transfer of vaccine for H5/H7 LPAI to Cooperating State Agencies if provided for in the initial State response and containment plan approved by APHIS under § 56.10; and

(3) Payment for vaccine administration by Cooperating State Agencies, if provided for in the initial State response and containment plan approved by APHIS under § 56.10.

(b)(1) Any payment made to a State or an Official State Agency for the activities listed in paragraphs (a)(1) and (a)(3) of this section must be made through a cooperative agreement between the Cooperating State Agency and APHIS. The payment for which the Cooperating State Agency is eligible will be determined in the cooperative agreement.

(i) For any Cooperating State Agency that participates in the National Poultry Improvement Plan diagnostic surveillance program for H5/H7 LPAI, as described in § 146.14 of this chapter, and has an initial State response and containment plan for H5/H7 LPAI that is approved by APHIS, as described in § 56.10 of this part, the cooperative agreement will provide that the Cooperating State Agency is eligible for payment of 100 percent of the costs of surveillance and monitoring and 100 percent of the costs of vaccine administration, as determined in the cooperative agreement.

(ii) For any Cooperating State Agency that does not meet the criteria in paragraph (b)(1)(i) of this section, the cooperative agreement will provide that the Cooperating State Agency is eligible for payment of 25 percent of the costs of surveillance and monitoring and 25 percent of the costs of vaccine administration, as determined in the cooperative agreement.

(2) Transfer of vaccine under paragraph (a)(2) of this section must be accomplished through a cooperative

agreement between the Cooperating State Agency and APHIS.

(c) Cooperating State Agencies will be responsible for making the determination to request Federal assistance under this part in the event of an outbreak of H5/H7 LPAI.

[71 FR 56323, Sept. 26, 2006, as amended at 75 FR 10656, Mar. 9, 2010]

§ 56.3 Payment of indemnity and/or compensation.

(a) *Activities eligible for indemnity and/or compensation.* The Administrator may pay indemnity and/or compensation for the activities listed in this paragraph (a), as provided in paragraph (b) of this section:

(1) Destruction and disposal of poultry that were infected with or exposed to H5/H7 LPAI;

(2) Destruction of any eggs destroyed during testing of poultry for H5/H7 LPAI during an outbreak of H5/H7 LPAI; and

(3) 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, in the case of materials, if the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable for any reason, the destruction and disposal of the materials.

(b) *Percentage of costs eligible for indemnity and/or compensation.* Except for poultry that are described by the categories in this paragraph (b), the Administrator is authorized to pay 100 percent of the costs and/or compensation, as determined in accordance with § 56.4, of the activities described in paragraphs (a)(1) through (3) of this section, regardless of whether the infected or exposed poultry participate in the Plan. For infected or exposed poultry that are described by the categories in this paragraph (b), the Administrator is authorized to pay 25 percent of the costs of the activities described in paragraphs (a)(1) through (3) of this section:

(1)(i) The poultry are from a breeding flock, commercial flock, or slaughter plant that participates in any Plan program in part 145 or 146 of this chapter but that does not participate in the