Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 82 and 94

[Docket No. APHIS–2006–0036]

Exotic Newcastle Disease; Quarantine Restrictions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to make several changes to the exotic Newcastle disease domestic quarantine regulations, including adding an option for the movement of pet birds; adding restrictions on the interstate movement of live ratites out of quarantined areas; harmonizing the domestic and foreign regulations regarding the movement of dressed carcasses of dead birds and dead poultry, including one change to the importation regulations; providing for the use of alternative procedures for treating manure and litter and for composting; and adding an additional surveillance period after the conditions for removing quarantine are met before quarantine is removed. We have concluded that these proposed changes are necessary based on our experiences during the eradication programs for the 2002–2003 outbreaks of exotic Newcastle disease in California, Arizona, Nevada, and Texas. In the event of an exotic Newcastle disease outbreak, these changes would help to ensure that exotic Newcastle disease does not spread from quarantined areas and that exotic Newcastle disease is eradicated within quarantined areas.

DATES: We will consider all comments that we receive on or before May 26, 2006.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2006–0036 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0036, 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–2006–0036.

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: Dr. Glen Garris, Chief of Staff, Emergency Management, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

Exotic Newcastle disease (END) is a contagious and fatal viral disease affecting the respiratory, nervous, and digestive systems of birds and poultry. END is so virulent that many birds and poultry die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry.

The regulations in ''Subpart A—Exotic Newcastle Disease (END)'' (9 CFR 82.1 through 82.16, referred to below as the regulations) were established to prevent the spread of END in the United States in the event of an outbreak. These regulations specify the conditions under which certain articles, including live birds and live poultry, dead birds and dead poultry, manure and litter, eggs other than hatching eggs, hatching eggs, and vehicles and conveyances, may be moved out of areas listed in § 82.3 as quarantined for END.

END is spread primarily through direct contact between healthy birds and poultry and the bodily discharges of infected birds. Due to the high concentrations of END virus in such bodily discharges, the virus can be spread not only by the movement of infected birds but also by the movement of objects or people bearing discharges containing the virus. Therefore, the disease is often spread via such vectors as manure haulers, rendering trucks, feed delivery personnel, poultry buyers, egg service people, and poultry farm owners and employees.

The END virus can survive for several weeks on birds' feathers, manure, and other organic material. It can survive indefinitely in frozen material. However, the destruction of the virus is accelerated by warm and dry environments and by the ultraviolet rays in sunlight.

Between November 21, 2002, and September 16, 2003, areas of the States of California, Arizona, Nevada, New Mexico, and Texas were quarantined due to the presence of END. In order to make better decisions on how to eradicate END from those areas, we completed several risk assessments and epidemiological investigations in the context of our activities under the regulations. The experience we gained during those outbreaks in enforcing the regulations and conducting the risk assessments and epidemiological investigations illustrated the need for changes in the regulations. Therefore, we are proposing to make several changes to the regulations in order to strengthen our regulations and incorporate changes we identified as necessary during those outbreaks. These changes are discussed below by topic.

Live Pet Birds

The regulations in § 82.5 regarding the interstate movement of live birds and live poultry from an area quarantined for END distinguish between the movement of pet birds and other birds and poultry.

Pet birds that are not known to be infected with or exposed to END are allowed to move interstate from an area quarantined for END only if the

following conditions are met, as described in § 82.5(a): They are accompanied by a permit; epidemiological evidence indicates that they are not infected with any communicable disease; the birds show no clinical signs of sickness during the 90 days before movement; the birds have been maintained apart from other birds and poultry in the quarantined area during the 90 days before movement; the birds have been under the ownership and control of the individual to whom the permit is issued for the 90 days before movement and are moved by the individual to whom the permit is issued; the birds are caged during movement; and the individual to whom the permit is issued submits copies of the permit so that a copy is received by the State animal health official and the veterinarian in charge for the State of destination within 72 hours of the arrival of the birds at the destination listed on the permit.

Because pet bird owners typically do not practice biosecurity controls as restrictive as those that are practiced at commercial facilities, the individual to whom the permit is issued is required to maintain ownership and control of the birds and maintain them apart from other birds and poultry from the time they arrive at the place to which the individual is taking them until a Federal or State representative examines the birds and determines that the birds show no clinical signs of END. The regulations provide that the examination must take place no less than 30 days or more after the interstate movement. The individual to whom the permit is issued is also required to allow Federal and State representatives to examine the birds at any time until they are declared free of END and to notify the veterinarian in charge or the State animal health official in the State to which the birds are moved within 24 hours in the event that the birds die or show any clinical signs of END.

During the 2002–2003 outbreaks of END, many owners of pet birds who had been in control of the pet birds for less than 90 days requested that APHIS allow them to move their pet birds out of the quarantined areas. Because these individuals had been in control of their pet birds for less than 90 days, these individuals could not fulfill that requirement of the regulations or verify that during the 90 days before movement the birds had shown no clinical signs of sickness and the birds had been maintained away from other birds and poultry in the quarantined area. However, many of the pet birds in question were not known to be infected with or exposed to END, and no epidemiological evidence indicated that they had been exposed to END or any other communicable disease.

We determined that these birds could be moved safely out of the quarantined area if they were moved directly to a USDA-approved quarantine facility for a 30-day quarantine. If no evidence of disease was found during the quarantine period, the pet birds were allowed to move freely after being released from quarantine. Pet birds moved using this option had to meet all the other requirements of § 82.5, including epidemiological criteria and transit requirements. We are proposing to add this option to the regulations so that owners of pet birds within areas quarantined for END will have additional flexibility.

Under this proposed option, if pet bird owners choose to move their pet birds to a USDA-approved quarantine facility in order to move them out of an area quarantined for END, they would assume the costs of keeping their pet bird in quarantine for the 30-day period. At a USDA quarantine facility, a 30-day quarantine for a pet bird would currently cost $390. USDA-approved quarantine facilities not owned by USDA may set their own fees for holding birds in quarantine.

To accomplish this change, we are proposing to revise § 82.5(a). In the proposed revision, existing paragraph (a)(1) would be moved into paragraph (a)(2), and a new paragraph (a)(1) would set out epidemiological and testing requirements for pet birds. These requirements, except for the requirement that epidemiological evidence must indicate that the birds are not infected with any communicable disease, would differ on the basis of whether the bird has been under the control and ownership of the owner for 90 days. Paragraph (a)(1)(i) would set out the requirements for pet birds that have been under the control and ownership of the owner for 90 days; this paragraph would incorporate the existing § 82.5(a)(3), (a)(4), (a)(5), (a)(8), and (a)(9). If the pet bird could not meet all these requirements, it could only be moved from a quarantined area if it was moved to a USDA-approved quarantine station under § 82.5(a)(1)(ii). (Pet birds that have been under the control and ownership of the owner for 90 days and meet the epidemiological requirements but do not meet one or more of the other requirements in § 82.5(a)(1)(i) would also be eligible to be moved from a quarantined area to a USDA-approved quarantine station under § 82.5(a)(1)(ii), if the owner so chooses.) Paragraph § 82.5(a)(2) would set out movement restrictions that would apply to all pet birds; these proposed restrictions are identical to those currently in § 82.5(a)(6), (a)(7), (a)(10), and (a)(11).

We are also proposing to correct an error in the regulations governing the movement of pet birds. In § 82.5, paragraph (a)(2) currently reads ''Epidemiological evidence, as described in § 82.2(a), indicates that the birds are not infected with any communicable disease.'' However, the epidemiological criteria in § 82.2(a) specifically address infection with END, not communicable diseases in general. Therefore, we are proposing to remove the phrase ''as described in § 82.2(a)'' from this requirement as it appears in § 82.5(a)(2). (In this revision, § 82.5(a)(2) would be moved to § 82.5(a)(1).)

Other Live Birds, Including Ratites

Other birds and poultry not known to be infected with or exposed to END are allowed to be moved interstate from an area quarantined for END only if the following conditions are met, as described in § 82.5(b): They are accompanied by a permit; they are covered in such a way as to prevent feathers and other debris from blowing or falling off the means of conveyance; they are moved in a means of conveyance either under official seal or are accompanied by a Federal representative; they are not unloaded until their arrival at their destination listed on the permit, except for emergencies; and the permit is presented upon arrival at the destination and copies of the permit are submitted so that a copy is received by the State animal health official and the veterinarian in charge for the State of destination within 72 hours of arrival. Birds other than poultry are required to be moved to a site approved by the Administrator. Poultry are required to be moved to a recognized slaughtering establishment and must be slaughtered within 24 hours of arrival at such an establishment; the required permit must be presented to a State or Federal representative upon arrival at such an establishment.

During the outbreak of END in California, we found that there existed some confusion about whether the interstate movement from quarantined areas of birds imported for eventual resale as pet birds should be governed by the regulations for the movement of pet birds or the regulations for the movement of other birds and poultry. As noted previously, the regulations in § 82.5(a) governing the interstate movement of pet birds from a quarantined area are stricter than the regulations for other birds and poultry because pet bird owners typically do not

practice biological security controls as restrictive as those that would be practiced at commercial facilities. Birds imported for eventual resale as pet birds, by contrast, are typically imported from and into biologically secure facilities; therefore, they should be subject to the regulations in § 82.5(b) governing the movement of other birds and poultry from a quarantined area.

To clarify this distinction, we are proposing to change the definition of *pet birds* and add a new definition of *commercial birds* in § 82.1. The proposed definitions are modeled on the definitions of these terms in the regulations governing the importation of birds other than poultry in § 93.100. The new definition of *pet birds* would read: ''Birds, except ratites, that are kept for the personal pleasure of their individual owners and are not intended for resale.'' The new definition of *commercial birds* would read: ''Birds that are moved or kept for resale, breeding, public display, or any other purpose, except pet birds.'' We would also revise the heading of paragraph (b) in § 82.5 to read *''Other birds (including commercial birds) and poultry''* and revise the introductory text of paragraph (b) to explicitly indicate that commercial birds moved interstate must fulfill the requirements in paragraph (b). These proposed revisions are intended to clarify that birds imported for eventual resale as pet birds would be included in the definition of *commercial birds* and thus subject to the regulations in § 82.5(b), rather than the regulations in § 82.5(a).

As noted previously, the regulations require that live poultry moved interstate from an area quarantined for END must be moved to an approved slaughtering establishment and slaughtered within 24 hours of arrival. For the reasons discussed in the following paragraphs, we are proposing to amend the regulations to place the same requirements on ratites moved interstate from a quarantined area.

The term ''ratites'' encompasses cassowaries, emus, kiwis, ostriches, and rheas. Surveillance of these birds for infection with END is more difficult than surveillance of poultry. Detection of virus shedding in live ratites is unpredictable. Examiners may not always be able to detect END infection by examination or testing of swabs for virus, which are the standard procedures for testing other birds whose movement is regulated by § 82.5(b). Tissue samples can provide additional certainty in diagnosing END; however, while the death loss rates in production flocks of poultry mean that tissue samples are normally available for testing, the death loss rates in flocks of ratites are much lower, meaning that tissue samples of ratites may be unavailable. The relative lack of dead ratites for surveillance purposes also means that tests on tissues of dead ratites are less reliable than tests on tissues of dead poultry. For these reasons, no consensus exists on optimal surveillance techniques for END in live ratites. This means that any determination that ratites to be moved interstate from a quarantined area are not known to be infected with or exposed to END is, at best, uncertain.

In addition, it is often difficult to determine whether ratites have been exposed to END; they are mostly maintained in outdoor pens or in backyard flocks, which are often less biologically secure than the facilities in which commercial flocks of poultry are maintained. Ratites that have been kept in these conditions within a quarantined area may therefore be more likely to have actually been exposed to END than other birds kept under more biologically secure conditions. Finally, ratites typically live in highly concentrated populations, meaning that END could be spread quickly by an infected or exposed ratite moved interstate from a quarantined area.

Slaughtering and disposing of live poultry moved interstate from a quarantined area, as required by § 82.5(b), ensures that END virus is not spread from any poultry that, despite not being known to be infected with or exposed to END, may pose a risk of spreading the END virus during interstate movement. Requiring that ratites be moved to slaughter under the same conditions under which live poultry are required to be moved would ensure that the END virus would not be spread through the movement of ratites from quarantined areas.

Therefore, we are proposing to amend § 82.5(b)(5) to indicate that ratites as well as poultry must be moved directly to slaughter when moved interstate from a quarantined area. In order to accomplish this change, we would also add a definition of the term *ratites* to § 82.1. The definition we would add is identical to the definition of *ratites* found in the regulations governing the importation of birds other than poultry in § 93.100. It reads ''Cassowaries, emus, kiwis, ostriches, and rheas.''

Dressed Carcasses of Dead Birds and Dead Poultry

The regulations in § 82.6(b) regarding interstate movement of dressed carcasses of dead birds and dead poultry from an area quarantined for END allow dressed carcasses from dead birds and dead poultry that are not known to be infected with END to be moved interstate from a quarantined area under the following conditions: The birds or poultry from which the dressed carcasses were derived were slaughtered in a recognized slaughtering establishment; the dressed carcasses are accompanied by a permit; they are moved in a means of conveyance either under official seal or accompanied by a Federal representative; they are not unloaded until their arrival at the destination listed on the permit; they are moved without stopping to the destination listed on the permit; and copies of the permit are submitted so that a copy is received by the State animal health official and the State veterinarian in charge for the State of destination within 72 hours of the arrival at the destination of the dressed carcasses listed on the permit.

In this proposal, we would replace the current restrictions on the interstate movement of dressed carcasses from birds and poultry from an area quarantined for END with new restrictions based on the restrictions on the importation of birds and poultry from foreign regions where END is considered to exist. Those regulations are found in 9 CFR 94.6.

The current restrictions placed on the movement of dressed carcasses in the regulations do not provide a sufficient level of protection against the possible spread of END from the quarantined area through the movement of dressed carcasses of dead birds and dead poultry. One study has demonstrated that the END virus can survive for 134 days in the bone marrow and 98 days in the skin of plucked and eviscerated carcasses stored at 34 to 35 °F (1 to 2 ° C). The virus survived for more than 300 days in the bone marrow and skin of plucked and eviscerated carcasses stored at −4 °F (−20 °C).[1]

Although the regulations currently require that dressed carcasses to be moved out of the quarantined area be derived from birds and poultry not known to be infected with END, this restriction may not be sufficient to ensure that END is not present in the dressed carcasses. Birds and poultry not known to be infected with END may still be infected with the virus, because the criteria used to determine whether a bird is known to be infected with or exposed to END do not require that the birds and poultry actually be physically tested for the virus; for example, birds or poultry suffering from presymptomatic stages of END might

[1] Asplin, F.B. ''Observations on the viability of Newcastle disease virus,'' *The Veterinary Record*, 61:159, 1949.

not be known to be infected but might be infected nonetheless. Indeed, the spread of END in dozens of outbreaks of the disease in the United Kingdom was apparently related to feeding uncooked poultry swill to chickens.[2]

The END virus can be completely destroyed in meat by exposure to high temperatures such as those necessary to fully cook bird and poultry meat. For this reason, the regulations governing the importation of birds and poultry from foreign regions where END is considered to exist require that carcasses or parts or products of carcasses from poultry or other birds imported into the United States from those regions must either be: Packed in hermetically sealed containers and cooked by a commercial method after packing to produce articles that are shelf-stable without refrigeration, or cooked so that they have a thoroughly cooked appearance throughout, as determined by an inspector. (Carcasses of game birds and carcasses intended for importation to museums, educational establishments, or other establishments from regions where END is considered to exist may be imported into the United States under different conditions; these are discussed later in this document.) Section 94.6 also sets out certain requirements for establishments in regions where END is considered to exist that process carcasses or parts or products of carcasses of poultry and other birds for export to the United States. We believe that these requirements for cooking dressed carcasses of dead birds and dead poultry from foreign regions where END is considered to exist and for establishments in those regions that process dead birds and dead poultry, as applied to the equivalent products and establishments in domestic areas quarantined for END, would be more effective at reducing the risk of spreading END into nonquarantined areas due to the movement of dead birds and dead poultry than the previous regulations in § 82.6.

In addition, under the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures, APHIS must apply the same movement restrictions on both foreign and domestic commodities from regions where an animal disease is present, under the principle of national treatment. The regulations on the movement of dressed carcasses from areas in the United States that have been quarantined for END have been less restrictive than the regulations on the movement of dressed carcasses from foreign regions where END is considered to exist. Applying the same restrictions to these commodities allows APHIS to meet its obligations under international trade agreements while reducing the risk that END could spread from a quarantined area through the movement of dressed carcasses.

Therefore, we are proposing to replace the current restrictions on the movement of dressed carcasses from areas within the United States that are quarantined for END with restrictions that are substantively the same as those currently in place to prevent the introduction of END into the United States via bird and poultry carcasses and parts or products of carcasses that originate in regions specified in § 94.6 where END is known to exist. In addition, the regulations governing the importation of birds and poultry from foreign regions where END is considered to exist refer to ''carcasses and parts or products of carcasses''; to make our domestic and import regulations consistent, we would change the definition of *dressed carcasses* in § 82.1 to read ''Carcasses of birds or poultry that have been eviscerated, with heads and feet removed, or parts or products of such carcasses.''

We are proposing to add one provision to § 82.6 that is not found in the regulations in § 94.6. The regulations in § 94.6 prohibit any establishment in a region where END is known to exist that processes dressed carcasses for export to the United States from receiving or handling any live poultry, with no exceptions. In § 82.6, we would allow establishments within an area quarantined for END that process dressed carcasses to receive live poultry as long as there is complete separation between the slaughter portion of the establishment and the portions of the establishment in which further processing takes place. Processing establishments in the United States are constructed on the assumption that non-endemic diseases such as END will not be present; prohibiting these establishments from receiving live poultry, as we prohibit processing establishments in regions outside the United States where END is known to exist from receiving live poultry, would disrupt established business practices. If complete separation between the slaughter portion of the establishment and the portions of the establishment in which further processing takes place can be achieved, we believe dressed carcasses can be processed safely in an establishment within a quarantined area that receives live poultry.

We would not add any provisions to the domestic END regulations to allow for the movement of dead birds and dead poultry out of quarantined areas to museums, educational institutions, or other establishments, as is provided for imported carcasses in § 94.6(b)(2). We believe it is likely that any dead birds and dead poultry that might be required by a museum, educational institution, or other establishment in the United States would be available from a nonquarantined area within the United States.

Finally, we have reviewed paragraph (b)(1) of § 94.6, which addresses the importation into the United States of carcasses of game birds from regions where END is considered to exist. This paragraph has allowed the carcasses of game birds to be imported into the United States as long as they are eviscerated and their heads and feet have been removed. For reasons discussed above, the importation of such carcasses poses a high risk of introducing END into the United States. Accordingly, we are proposing to remove and reserve paragraph § 94.6(b)(1).

We would continue to allow dead birds and dead poultry to be moved interstate from a quarantined area for disposal, as described in § 82.6(a).

Manure and Litter

The regulations in § 82.7 regarding the interstate movement of manure and litter from an area quarantined for END allow manure generated by and litter used by birds or poultry not known to be infected with END to be moved interstate from a quarantined area only if the manure or litter is accompanied by a permit with an affidavit stating the location of the poultry or birds that generated the manure or used the litter and the name and address of the flockowner; the manure or litter has been heated throughout to a temperature of 175 °F (79.4 °C) throughout; the manure or litter has been subsequently placed in a container that has never before been used or that has been disinfected, since last being used, in accordance with the regulations in 9 CFR part 71; and copies of the permit are submitted so that a copy is received by the State animal health official and the State veterinarian in charge for the State of destination within 72 hours of the arrival at the destination of the manure and litter listed on the permit.

We are proposing to amend these regulations to allow any other treatment judged by the Administrator to be

[2] Alexander, D.J. ''Newcastle disease and other avian paramyxoviruses,'' *Revue Scientifique et Technique Office International des Epizooties*, 19(2):443–462, 2000.

adequate to prevent the dissemination of END to be used to treat manure generated by and litter used by birds or poultry not known to be infected with END, as an alternative to the heat treatment that has been required by the regulations.

While heating manure or litter to a temperature of 175 °F (79.4 °C) throughout is an effective means of killing the END virus, other treatments may be available within quarantined areas that utilize different means to achieve the same end with the same efficacy. Some composting techniques are also effective at killing the END virus and could be used in place of heat treatment to ensure that manure and litter moved interstate from a quarantined area is not contaminated with the END virus. Occasionally, site-specific treatments may be appropriate. For example, premises not known to be infected with END in counties in California, Arizona, and Nevada that were quarantined as of March 5, 2003, could safely ship manure or litter that had been stored for more than 90 days on the premises; we determined that those commodities had been adequately heated to kill the END virus, based on average daily temperatures in those counties. Providing that other equally effective options can be used as an alternative to the heat treatment specified by the regulations would benefit both producers in quarantined areas, who may be able to use different treatments to comply with quarantine restrictions on the interstate movement of manure and litter at less cost, and quarantine authorities, who could see increased compliance with the quarantine regulations if lower cost options are available.

Therefore, we are proposing to amend the regulations to provide that manure generated by and litter used by birds or poultry not known to be infected with END that is to be moved interstate from a quarantined area may be treated either with the heat treatment described above or with any other treatment approved by the Administrator as being adequate to prevent the dissemination of END. This change would give persons who wish to move manure and litter interstate from quarantined areas more flexibility while continuing to ensure that manure generated by and litter used by birds or poultry not known to be infected with END that is moved interstate is not contaminated with the END virus.

Manure and Litter From Infected Flocks

As stated above, the regulations in § 82.7 only allow the movement of manure generated by or litter used by bird or poultry not known to be infected with END. In addition, the regulations in § 82.4, which lists general prohibitions and restrictions on the movement of articles from a quarantined area, specifically prohibit the movement of litter used by or manure generated by birds or poultry, or a flock of birds or poultry, infected with END. However, we have determined that, under certain conditions, compost generated from manure generated by or litter used by END-infected flocks may be safely moved interstate from quarantined areas. Therefore, we are proposing to amend § 82.7 to provide conditions under which such manure and litter may be moved interstate from quarantined areas. Under this proposal, the existing provisions of § 82.7 would be incorporated into a new paragraph (a) and the proposed new provisions would be added as a new paragraph (b). The conditions under which manure and litter from END-infected flocks would be allowed to move interstate from quarantined areas are:

- The manure and litter would have to be accompanied by a permit.
- All birds and poultry would have to be removed from the premises where the manure or litter was held.
- After all birds are removed from the premises where the manure or litter was held, all manure and litter inside and outside the bird or poultry house would have to remain undisturbed for at least 28 days before being moved from the infected premises for composting.
- Composting would have to be done at a site approved by the Administrator and under a protocol approved by the Administrator as being adequate to prevent the dissemination of END. All manure and litter from the infected premises would have to be moved to the composting site at the same time.
- Following the composting process, the composted manure or litter would have to remain undisturbed for an additional 15 days before movement.
- After this 15-day period, all of the composted manure or litter from the infected site would have to be removed at the same time.
- The resulting compost would have to be transported either in a previously unused container or in a container that has been cleaned and disinfected, since last being used, in accordance with 9 CFR part 71.
- The vehicle in which the resulting compost is transported would have to have been cleaned and disinfected, since last being used, in accordance with 9 CFR part 71.
- Copies of the permit accompanying the compost derived from the manure and the litter would have to be submitted so that a copy is received by the State animal health official and the veterinarian in charge for the State of destination within 72 hours of arrival of the compost at the destination listed on the permit.

Leaving the composted manure or litter undisturbed during two lengthy periods allows the END virus to die out in the environment; the END virus can only survive without host material for a limited length of time.

This addition would give owners of infected flocks an additional option for disposal of their manure and litter while ensuring that END is not spread to nonquarantined areas via the interstate movement of composted manure and litter from END-infected flocks.

To reflect this change, we would also revise paragraph (a)(2) of § 82.4, which prohibits the interstate movement of litter or manure from an END-infected flock in a quarantined area, to indicate that such litter and manure may be moved interstate from a quarantined area under the conditions described in new § 82.7(b).

Eggs, Other Than Hatching Eggs

The regulations in § 82.8 regarding the interstate movement of eggs, other than hatching eggs, from an area quarantined for END allow the interstate movement of eggs, other than hatching eggs, from flocks not known to be infected with END from a quarantined area if the eggs are accompanied by a permit; the eggs have been cleaned and sanitized in accordance with 7 CFR part 59; [3] the eggs are packed either in previously unused flats or in used plastic flats or cases that were cleaned and disinfected, since last being used, in accordance with 9 CFR part 71; the eggs are moved to a facility where they are examined to ensure that they have been cleaned and sanitized; and copies of the permit are submitted so that a copy is received by the State animal health official and the State veterinarian in charge for the State of destination within 72 hours of the arrival of the eggs at the facility.

While these safeguards are essential to ensuring that eggs, other than hatching eggs, from flocks not known to be infected with END can be moved interstate without spreading END from the quarantined area, they do not fully address the risks that may arise at the processing plants that prepare the eggs for eventual sale. Processing plants accepting eggs, other than hatching eggs, under these regulations typically accept eggs from both quarantined areas and

[3] The regulations in 7 CFR part 59 were moved to 9 CFR part 590 in a final rule published in the **Federal Register** on December 31, 1998 (63 FR 72351–72356). We would update the regulations in § 82.8(a)(2) to reflect that change.

nonquarantined areas and, once the eggs have been processed, send them to destinations both within and outside the quarantined area. In addition, some processing plants have facilities in which poultry lay eggs onsite, meaning that eggs, other than hatching eggs, that are contaminated with END and are not properly handled could expose live poultry to the virus. As described previously, END can be transmitted in many ways, and the virus can survive on the surface of eggshells for extended periods. We believe that risks of transmission of END at plants that process eggs, other than hatching eggs, from flocks not known to be infected with END within a quarantined area should be addressed by the regulations.

Therefore, we would revise paragraph (a)(3) to set out the following standards for processing plants:

- Processing plants would have to separate their processing and layer facilities, the incoming and outgoing eggs at the facilities, and any flocks that may reside at the processing plant.
- Adequate controls would have to be in place to ensure that trucks, shipping companies, or other visitors do not expose the processing plant to END.
- Equipment used in the processing plant would have to be cleaned and disinfected in accordance with 9 CFR part 71 at intervals deemed appropriate by the Administrator to ensure that the equipment cannot transmit END to the eggs, other than hatching eggs, being processed.
- The eggs would have to be packed either in previously unused flats or cases or in used plastic flats that were cleaned or disinfected, since last being used, in accordance with 9 CFR part 71. (This provision is the only one currently found in § 82.8 (a)(3) of the regulations.)

Requiring that these standards be met in processing plants would assist quarantine authorities in ensuring that eggs are processed safely while continuing to allow the interstate movement of eggs, other than hatching eggs, from flocks not known to be infected with END.

Hatching Eggs

The regulations in § 82.9 regarding the interstate movement of hatching eggs from an area quarantined for END allow the interstate movement of hatching eggs from birds or poultry not known to be infected with or exposed to END from a quarantined area if the eggs are accompanied by a permit; the copies of the permit accompanying the hatching eggs are submitted so that a copy is received by both the State animal health official and the veterinarian in charge for the State of destination within 72 hours of the arrival of the hatching eggs at their destination facility; the hatching eggs are moved to a premises designated jointly by the veterinarian in charge and the State animal health official from the time of arrival until hatch; and the birds or poultry hatched from the eggs are held at the premises for not less than 30 days after hatch to determine their freedom from END.

We are proposing to add a requirement to the regulations that hatching eggs moved interstate from an area quarantined for END must have been kept in accordance with the conditions set out in §§ 147.22 and 147.25 of the National Poultry Improvement Plan, a voluntary program for producers of poultry whose provisions are enumerated in 9 CFR parts 145 and 147. Section 147.22 prescribes conditions for sanitation in a hatchery; § 147.25 states that fumigation may be used for sanitizing hatching eggs and hatchery equipment or rooms as part of a sanitation program, such as the one in § 147.22. The National Poultry Improvement Plan's standards are developed by Federal and State officials working with industry representatives and are widely accepted among poultry producers. Requiring that these sanitation procedures be followed would provide further protection against transmission of END from the quarantine zone via hatching eggs moved interstate from the quarantine zone.

Removal of Quarantine

The regulations in § 82.14 state that an area will be removed from quarantine only when all the following requirements have been met: All birds and poultry exposed to END in the quarantined area have been found to be free of END; all birds and poultry infected with END in the quarantined area have been euthanized; all birds and poultry that have been euthanized and all birds and poultry that died from any cause other than slaughter have been buried in the quarantined area, rendered to ashes by incineration, rendered, or reduced to dust by composting in the quarantined area; all eggs produced by birds or poultry infected with or exposed to END in the quarantined area have been buried, reduced to ashes by incineration, or rendered; all manure generated by or litter used by birds or poultry infected with or exposed to END in the quarantined area has been reduced to ashes by incineration, or has been buried, composted, or spread on a field or turned under; and all vehicles, cages, coops, containers, troughs, and other equipment that have had physical contact with birds infected with or exposed to END, and all premises that have housed birds that have been infected with or exposed to END, are disinfected in accordance with 9 CFR part 71. We are proposing to amend these regulations to indicate that, as an alternative to the composting procedures that has been mandated by the regulations, any treatment judged by the Administrator to be adequate to prevent the dissemination of END may be used to treat the relevant materials.

The procedures for composting that are described in this section are effective at eliminating END virus from birds and poultry and from manure and litter. However, as in the situation described previously under the heading ''Manure and Litter,'' other composting procedures exist that would provide equivalent lethality for the END virus while giving flockowners and Federal and State quarantine officials the option of selecting an effective procedure that may be more adaptable to the flockowners' individual situations. Therefore, we are proposing to amend the detailed descriptions of composting procedures found in the current regulations in paragraphs § 82.14(c)(2) and (e)(2) to indicate that the relevant articles may also be composted according to a procedure approved by the Administrator as being adequate to prevent the dissemination of END. This change would provide flockowners with additional flexibility as they attempt to comply with the requirements to be removed from quarantine.

We would also add a provision to require follow-up surveillance for a length of time determined by the Administrator after the conditions of § 82.14 are met and before a quarantined area is released from quarantine. Specifically, we are proposing to add a new paragraph § 82.14(i) to the end of § 82.14 that would read: ''An area will not be released from quarantine until follow-up surveillance over a period of time determined by the Administrator indicates END is not present in the quarantined area.''

The conditions in § 82.14 describe what must occur before an area may be released from quarantine, but do not obligate APHIS to release an area from quarantine once those conditions are met. During the 2002–2003 outbreaks of END, we determined that an additional surveillance period was necessary to gather additional data and ensure that areas were not removed from quarantine prematurely, and we anticipate that such a surveillance period would be necessary after the conditions of § 82.14 are met if there are any future outbreaks of END within the United States. (The need for an additional surveillance

period is also recognized in the Terrestrial Animal Health Code of the World Organization for Animal Health, which is recognized by the World Trade Organization as an international standards-setting organization for animal health. The Code states that a country that eradicates END should only be considered free of END 6 months after the last affected animal is slaughtered.[4]) Adding this provision to the regulations would clarify that an additional surveillance period will follow the completion of the conditions in § 82.14 before an area will be released from quarantine.

Executive Order 12866 and Regulatory Flexibility Act

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

We are proposing several changes to the END domestic quarantine regulations, including adding an option for the movement of pet birds; harmonizing the domestic and foreign regulations regarding the movement of dressed carcasses of dead birds and dead poultry; adding restrictions on the interstate movement of ratites out of quarantined areas; providing for the use of alternative procedures for treating manure and litter and for composting; and adding an additional surveillance period after the conditions for removing quarantine are met before quarantine is removed. We have determined that these changes are necessary based on our experiences during the eradication programs for the recent outbreaks of END in California, Arizona, Nevada, and Texas. These changes would help to ensure that END does not spread from quarantined areas and that END is eradicated within quarantined areas.

Exotic Newcastle disease (END), also known as velogenic viscerotropic Newcastle disease, is a highly contagious and fatal viral disease affecting all species of birds. As it is one of the most infectious and virulent diseases of poultry in the world, END results in many birds dying before demonstrating any clinical signs. In unvaccinated poultry flocks, END has a death rate of close to 100 percent. Moreover, the mortality rates in vaccinated flocks are 10 to 20 percent, clearly showing that vaccination does not guarantee protection against END.

END affects the respiratory, nervous, and digestive systems of birds. After an incubation period of 2 to 15 days, an infected bird may show any of the following signs: Respiratory effects such as sneezing, gasping for air, nasal discharge, and coughing; digestive effects such as greenish, watery diarrhea; upsets in the nervous system such as depression, muscular tremors, drooping wings, twisting of the head and neck, circling, and complete paralysis; drop in egg production; production of thin-shelled eggs; swelling of tissue around eyes and neck; and death. As mentioned before, not all birds demonstrate clinical signs before dying, and some pet birds, such as parrots, may shed the virus for more than a year without showing any of the common clinical signs. The virus is spread primarily through direct contact between healthy birds and the bodily discharges, such as fecal material or nose, mouth, and eye secretions, of infected birds. Not surprisingly, the closer the physical proximity of birds the more rapidly END spreads, clearly posing a significant threat to the commercial poultry industry. END is also effectively spread by means of indirect contact. For instance, virus-bearing material can be picked up on shoes and clothing of laborers in the poultry industry and transported from an infected flock to a healthy one. Considering birds can still shed the disease while not exhibiting signs, the opportunity to spread END by means of indirect contact represents a real hazard.

END was first identified in the United States in 1950 in California. The outbreak was traced to game birds and pheasants imported from Hong Kong. The disease spread to five poultry farms in Contra Costa County, but it was quickly eliminated by destroying infected chickens. In 1971, a major outbreak of END occurred in California commercial poultry and lasted for 2 years. As a result of that outbreak, 1,341 infected flocks were identified, and almost 12 million birds were destroyed. The eradication program cost taxpayers $56 million ($228 million in 2002 dollars), severely disrupted the operations of many producers, and increased the prices of poultry and poultry products to consumers. On October 1, 2002, END was confirmed in backyard poultry in Southern California. The disease spread from backyard poultry to commercial poultry operations in California, backyard poultry in Nevada and Arizona, and poultry in Texas and New Mexico. USDA's APHIS took the lead in END eradication efforts. Immediately a task force of over 1,500 people from APHIS and the California Department of Food and Agriculture combined forces to fight the disease. At last count, almost 4 million birds were destroyed to contain the spread of END.

Economic Analysis

The proposed changes to the END regulations would have an effect on all persons and entities handling birds of any type, including farm and commercial operations, backyard flock owners and enthusiasts, and pet bird owners in an END quarantined area wishing to engage in interstate movement. While accurate statistics on farm and commercial operations in the United States are readily available, there is a significant information gap on the backyard flocks and pet bird owners. As such, we have no way of quantifying the true number of persons who would be affected by these changes.

The United States is the world's largest producer of poultry meat and the second-largest egg producer behind China. Preliminary reports for the year 2004 indicate there were a total of 454.1 million chickens, excluding commercial broilers, with a cash value of $1.120 billion. In the year 2003, broiler production, raised for the purpose of meat production, totaled 8.492 billion, with a combined live weight of over 43.9 billion pounds. The value of broiler production for that year was over $15.2 billion. In 2003, the date of the last full report available, there were a total of 87.1 billion eggs produced with a cash value of $5.3 billion.[5] The United States is also the world's largest turkey producer. In 2003, turkey production totaled over 274 million birds with a combined live weight of 7.549 billion pounds and a cash value of over $2.7 billion.[6]

The U.S. poultry industry plays a significant role in international trade. In fact, the United States is the world's largest exporter of both broilers and turkey products. In 2003, broiler exports totaled 4.93 billion pounds, valued at $1.5 billion. Turkey exports for the same year totaled 482 million pounds and were valued at $265 million. In addition, 41 million dozen shell eggs for consumption and 59 million dozen of egg products, on an egg-equivalent

[4] See *http://www.oie.int/eng/normes/mcode/en_chapitre_2.7.13.htm.*

[5] USDA, *Agricultural Statistics 2005.* Washington, DC: National Agricultural Statistics Service, 2005. Estimates cover the 12-month period, December 1 of the previous year through November 30.

[6] USDA, *Agricultural Statistics 2005.* Washington, DC: National Agricultural Statistics Service, 2005. Estimates based on turkeys placed September 1, 2002 through August 31, 2003 and excludes young turkeys lost.

basis, were exported in 2003.[7] When END is present in the United States, it significantly reduces our ability to be competitive in international markets in the trade of poultry and poultry products. By extension, any efforts made to contain and prevent the spread of END throughout the United States would serve to enhance our reputation for providing high-quality products. Thus, the proposed changes would benefit the commercial poultry industry in the event of an outbreak by increasing product marketability, both domestically and internationally.

These proposed changes would also impact the movement of ratites out of a quarantined area. Ratites are a family of flightless birds with small wings and flat breastbones. Most important of the ratite family are ostriches, emus, and rheas. This industry is still in its infancy, so new in fact that ratites have only been under mandatory USDA inspection since April 22, 2002. Ostrich was the first ratite to be raised in the United States. As of February 2003, there were about 1,000 ostrich growers in the United States raising about 100,000 birds. Emu are now raised in at least 43 States by about 10,000 families (3,000) in Texas, with a total emu population of about a million. Rheas are the newest farm-raised ratite, but at over 15,000 birds, the United States has the largest population of farmed rheas. [8]

The ratite family of birds is approximately 95 percent usable for such marketable products as leather, feathers, meat, and oil. Ratite oil is being produced for niche cosmetic markets and the hides are usually set aside for more expensive garments. Ratite meat is a small industry, with only a small amount being sold to some higher scale restaurants and markets. Though the meat is more expensive than beef, pork, chicken and turkey, the future price of ratite meat is projected to decrease as the quantity becomes more widely available. In July 1996, the last available price report, ratites raised for slaughter were valued at $500 to $750 per bird.[9] Based on the populations and number of farms, we can assume that each farm has an average of 100 ostriches or emus. Thus, average ratite farms are bringing in annual sales of $750,000, the limit by which they can be considered small entities. In addition, as the very nature of the ratite industry is in its infancy, we can be safe in assuming the majority of ratite farms are small entities.[10]

Furthermore, it is important to note that regulations will affect backyard poultry not kept for commercial sale and pet owners in the quarantined area, the numbers of which are indeterminate. Although the specific numbers of persons in this category are unknown, we feel safe in determining that the impact of this proposal would not be significant as it only affects those constituents located within a quarantined area for the limited time the quarantine is actually in place. The remainder of this analysis will consider each of the major proposed changes individually and examine the expected benefits and costs.

Live Pet Birds

Current regulations, found in § 82.5, prohibit the movement of pet birds out of a quarantined area unless they have been in the owner's control for 90 days. The proposed rule would add a new option to allow pet birds, except those that are imported for eventual resale as pets, that have been in the owner's control for less than 90 days to be moved out of the quarantined area if they enter a 30-day quarantine at a USDA quarantine station outside of the quarantined area and meet all other requirements for movement. There is a user fee of $390 to enter into this 30-day USDA quarantine station. Entering into this quarantine station is voluntary and is meant to increase the flexibility for pet owners who have been in control of their pet birds for less than 90 days. Intuitively, we would expect only those pet owners who place a higher value on protecting and moving their birds out of the quarantine area than the expense of $390 to voluntarily enter the USDA facility. Hence, it is safe to assume the cost of entering the facility would not be significant to those pet owners that decide to do so. While that does pose an expense to pet owners, in light of the benefits of greater flexibility and protection from destruction, it is safe to assume the cost is acceptable for those pet owners that would decide to enter their birds into the USDA facility.

Those birds that are imported for eventual resale as pets, which fall under the added definition of commercial birds, are not bound by the restrictions in § 82.5(a). Current regulations require that commercial birds be imported from and into biologically secure facilities. As such, birds imported for eventual resale as pets have already met the necessary requirements to be determined free of END. The proposed amendment is more of a clarification rather than an actual change in movement requirements. Generally, END regulations governing pet birds are more restrictive than for other birds due to the fact that there are fewer biological security measures in place, and pet birds are thus more vulnerable to contracting and spreading END.

Other Live Birds, Including Ratites

Ratites have a tendency to be housed in outdoor pens or backyard flocks, thereby making surveillance of END for these birds more difficult. Also, virus detection techniques that are widely used to detect END were inconclusive when used on ratites. Combined, this creates a situation where infection of ratites in a quarantined area is highly possible and detection is uncertain, thus increasing the risk for widespread END dissemination. Consequently, the proposed rule would amend § 82.5(b)(5) to prohibit interstate movement of ratites from an area quarantined for END unless they are moved to a recognized slaughtering establishment and slaughtered within 24 hours of arrival at that establishment.

Previously, ratites not known to be infected with or exposed to END were allowed to move interstate as long as they were accompanied by a permit. Coupled with the knowledge that epidemiological tests of END were inconclusive in ratites, this created a situation where widespread dissemination of END was highly possible. In situations where ratites were thought to be exposed to END, these flocks were depopulated and the owners were paid indemnities based on current market values. While this regulation change would place restrictions on movement of ratites where there previously were none, we do not believe the economic impacts of this proposed change would be significant. Even though all movement of ratites must be directly to slaughter, considering the many marketable products of ratites such as leather, feathers, meat and oil, slaughtering these birds continues to allow owners the opportunity to market these products. Essentially, the proposed change seeks to increase biological security measures by restricting movement of ratites in a quarantined area. We do not expect that the

[7] USDA, *Poultry and Eggs: Trade.* Washington, DC: Economic Research Service, 2005.

[8] USDA, *FOCUS ON: Ratites (Emu, Ostrich, and Rhea).* Washington, DC: Food Safety and Inspection Service, February 2003.

[9] J.C. Hermes. ''Raising ratites: ostriches, emu, and rheas,'' *Pacific Northwest Extension Publications 494,* July 1996.

[10] Though there is no specific reference to ratite farming size standards, there is a line item with the NAICS code 112390, ''Other Poultry Production,'' where annual receipts of $750,000 or less satisfies the definition of a small entity. We feel safe in concluding ratite farming would be placed under this grouping. Table of Size Standards based on NAICS 2002. Washington, DC: U.S. Small Business Administration, 2002.

economic impacts to affected producers would be significant. We welcome public comment from ratite owners on what the expected costs of conforming to this change would entail.

Dressed Carcasses of Dead Birds and Dead Poultry

We would harmonize § 82.6 with the regulations in § 94.6 under which carcasses, and parts or products of carcasses, of birds and poultry may be imported into the United States from an area where END is considered to exist. The principal effect of this proposed change would be to prohibit any movement of uncooked bird or poultry meat out of a quarantined area. Only meat that has both been packed in hermetically sealed containers and cooked by a commercial method after packing to produce articles that are shelf-stable without refrigeration, or cooked so that it has a thoroughly cooked appearance throughout, would be allowed to move from the quarantined area. Current regulations, which do not require sealing and commercial cooking, do not provide a sufficient level of protection against the spread of END. The cost burdens of these proposed changes would be fairly obvious for those producers in a quarantined area engaged in the interstate movement of dead birds and poultry. Specifically, these costs would include gathering materials to seal the dead birds or poultry; the expense of electricity and/or gas, and perhaps equipment, needed to commercially cook the dead birds or poultry, and the additional labor costs associated with this change. These costs would vary by producer. We do not anticipate that these costs would significantly impact producers, the majority of which are small entities. We welcome public comment on what these costs would entail. The major benefit of this proposed change, outside of increasing safeguards against END, would be to harmonize domestic requirements of movement out of a quarantined area with import requirements from an area where END is known to exist, thereby satisfying the WTO requirement of national treatment.

In addition, all importation of eviscerated game birds from areas where END exists would be prohibited. Current regulations allow importation of eviscerated game birds from these regions even if the birds were infected. The biological security hazards such importation presented are all too clear. There would be no direct costs of complying with this proposed change outside of the loss in economic proceeds from the sale of these birds. For the most part, eviscerated game birds are imported for sale in specialty markets and restaurants. As the proposed rule would only discontinue importation from regions where END exists, it is possible that the price for eviscerated game birds from regions where END does not exist may increase, as the supply on the import market shrinks, but we would not expect this impact to be significant. The overall goal is to eliminate all biological security hazards posed with regard to END. Surely, the costs, as far as can be determined, would be insignificant in comparison to the benefits of eliminating END from domestic flocks.

Manure and Litter

Currently, the only way manure and/or litter used by birds and poultry not known to be infected with END can be moved interstate from a quarantined area is by heating throughout to a temperature of not less than 175 °F along with other requirements. This proposed change would eliminate some of the burdens placed on producers, the majority of whom are considered small entities, of moving manure and litter from a quarantined area while still maintaining an effective stance against END. Instead of requiring a heat treatment, APHIS would allow any alternative treatment to be used as long as it is determined by the Administrator of APHIS to be adequate in preventing the dissemination of END. This change would result in a potential decrease in cost, as we assume producers are profit maximizing entities; hence, it is safe to assume any alternative treatment proposed and accepted would be cheaper than the heat treatment previously required. As such, it is hard to quantify the actual cost savings of this proposed change as it would vary based on the alternative chosen.

Also, a procedure would be specified by which composted manure and/or litter from infected premises will be allowed to move outside the quarantined area. Current regulations, as found in § 82.7(a)(2), prohibit movement from a quarantined area of any manure or litter from infected premises. This amendment would be of benefit to small entities by allowing them greater flexibility. Thus, the proposed changes with regard to movement of manure and/or litter would pose no significant economic impact to small entities. Rather, small entities would benefit by having greater flexibility and the opportunity to decrease their present costs by looking into cheaper alternatives to heat treatment.

Eggs, Other Than Hatching Eggs

We would add performance standards for processing plants, those facilities that prepare eggs for eventual sale. Current conditions in many of these plants pose a high risk of END dissemination. For example, many of these plants commingle eggs from both quarantine and non-quarantined areas. Another commonplace occurrence is that many of these processing plants have facilities where poultry lay eggs on-site. This situation is particularly high-risk because if the eggs are contaminated with END and not properly handled, the virus could spread to the live on-site poultry. In an effort to increase biological security at these sites, these processing plants would have to meet several standards. They include:

- Physically separating processing and layer facilities, the incoming and outgoing eggs by quarantined and non-quarantined areas, and any flocks that may reside at the processing plant.
- Putting in place adequate controls to ensure processing plants are not exposed to END by any outside sources (*i.e.* those persons higher up in the vertical chain of production).
- Disinfecting equipment in accordance with 9 CFR part 71 at intervals deemed appropriate by the Administrator of APHIS so that there is less of a chance equipment transmits END to the eggs being processed.

Implementing these biological security standards would pose some burdens on processing plants. The actual cost imposed is indeterminable, because that would vary by processing plant. We welcome public comment on what these costs would entail. However, it is of note that the majority of these standards have to do with modifications in the procedures rather than any sort of capital investment. As such, it is not expected processing plants would incur a significant economic burden by conforming to these standards.

Hatching Eggs

This portion of the regulation would better harmonize domestic requirements for movement from a quarantined area with import requirements from an area where END is considered to exist. As a result, persons wishing to move hatching eggs out of the quarantined area would have to follow the procedures in the National Poultry Improvement Plan for sanitizing hatching eggs, as found in §§ 147.22 and 147.25. By harmonizing domestic requirements with import requirements, movement of hatching eggs out of quarantined areas would be slightly

more restrictive. However, the effect is not expected to pose a significant economic burden upon affected entities.

Removal of Quarantine

Finally, before the quarantine is lifted, birds and poultry that died from any cause other than slaughter, along with accompanying manure and litter generated by these birds and poultry, must be composted. This proposed change would allow the use of any alternative composting treatment that is determined by the Administrator to be adequate to prevent the dissemination of END. This change would be expected to produce cost savings, as we would expect producers to only adopt alternative treatment mechanisms that are cheaper than those currently prescribed. In addition, the proposal would require follow-up surveillance after a quarantined area has fulfilled all requirements to have the quarantine lifted. The time period necessary to conduct this follow-up surveillance would be determined by the Administrator of APHIS. This additional observation period would ensure the quarantine is not lifted prematurely.

Impact on Small Entities

The proposed rule intends to ensure any future END outbreaks in the United States are contained to as small an area as possible while allowing emergency authorities the flexibility to choose the methods best suited to meet that goal. Costs of complying with the changes this regulation proposes are relatively minimal and for the most part are not borne by producers. Specifically, there would be a user fee of $390 to enter the 30-day USDA quarantine station for those pet owners in control of their pets for less than 90 days wishing to move their birds interstate. In compliance with harmonizing domestic and import regulations for END, producers located within the quarantined area wishing to engage in interstate movement of dead birds and poultry would have to sustain the costs relating to sealing and commercially cooking the birds. In the case of processing plants, the costs inherent in complying with the proposed changes are not expected to require capital investment; rather, there would be the cost of extra labor and materials required with respect to meeting the proposed standards. Finally, State and/or Federal governments, depending on the type of quarantine, would shoulder the cost of inspection and certification of hatching eggs from a quarantined area. The benefits of the changes in the proposed rule, which would ensure more efficient and effective END containment and eradication efforts, are numerous. In many cases, the actual benefit in monetary terms is impossible to quantify. For example, ratite owners would be given the chance to slaughter and market the leather, feathers, meat and oil of their ratites instead of just receiving an indemnity payment. Alternative treatment procedures of moving manure and litter from a quarantined area would be considered and accepted by APHIS, thus potentially lifting some of the cost burdens previously faced by producers. Most importantly, the changes proposed seek to eliminate all biological security hazards posed with regard to END. The costs of compliance are insignificant in comparison to the benefits of eliminating END from domestic flocks. Therefore, APHIS believes the net benefit of the proposal would be positive.

The Regulatory Flexibility Act requires that agencies consider the economic impact of a regulation on small entities. The Small Business Administration (SBA) has established size criteria using the North American Industry Classification System (NAICS) to determine which economic entities meet the definition of a small firm. A small chicken egg operation (NAICS code 112310) is one having $11.5 million or less in annual receipts. All other poultry products and meat operations are small if they have $750,000 or less in annual receipts.

The last agricultural census estimated there were 83,381 domestic poultry and poultry products farms. Unfortunately, concrete information on the size distribution is unknown, but the census does indicate that only 29,393 of those poultry operations have annual sales of $50,000 or more.[11] Also, as was mentioned on the outset, the ratite farming industry is in its infancy. Therefore, it would be safe to assume that the majority of poultry operations in the United States are classified as small entities. While we acknowledge that these small entities would incur some costs of compliance, we do not believe these costs would be significant. Further, it is vital to remember that the proposed changes would only affect those small poultry operations located within an area quarantined as respects END, only for as long as the quarantine is in place.

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.

[11] USDA, *2002 Census of Agriculture, Table 56.* Washington, DC: National Agricultural Statistics Service.

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

Lists of Subjects

9 CFR Part 82

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

9 CFR Part 94

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

Accordingly, we propose to amend 9 CFR parts 82 and 94 as follows:

PART 82—EXOTIC NEWCASTLE DISEASE (END) AND CHLAMYDIOSIS

1. The authority citation for part 82 would continue to read as follows:

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

2. Section 82.1 would be amended as follows:

a. By removing the definition of *pet bird*.

b. By adding, in alphabetical order, definitions of *commercial birds, pet birds, and ratites* to read as set forth below.

c. By revising the definition of *dressed carcasses* to read as set forth below.

§ 82.1 Definitions.

* * * * *

Commercial birds. Birds that are moved or kept for resale, breeding,

public display, or any other purpose, except pet birds.

Dressed carcasses. Carcasses of birds or poultry that have been eviscerated, with heads and feet removed, or parts or products of such carcasses.

* * * * *

Pet birds. Birds, except ratites, that are kept for the personal pleasure of their individual owners and are not intended for resale.

* * * * *

Ratites. Cassowaries, emus, kiwis, ostriches, and rheas.

* * * * *

§ 82.4 [Amended]

3. In §82.4, paragraph (a)(2) would be amended by adding the words ‘‘, except as provided in § 82.7(b)’’ after the word ‘‘END’’.

4. Section 82.5 would be amended as follows:

a. By revising paragraph (a) and the introductory text of paragraph (b) to read as set forth below.

b. In paragraph (b)(5), by adding the words ‘‘or ratites’’ after the word ‘‘poultry’’ each time it occurs.

§ 82.5 Interstate movement of live birds and live poultry from a quarantined area.

(a) *Pet birds.* An individual may move his or her pet birds interstate from a quarantined area only if the birds are not known to be infected with or exposed to END and the following requirements are fulfilled:

(1) *Epidemiological and testing requirements.* For all pet birds moved interstate, epidemiological evidence must indicate that the birds are not infected with any communicable disease.

(i) *Pet birds that have been under the control and ownership of the owner for at least 90 days.* Pet birds that have been under the ownership and control of the individual to whom the permit is issued for the 90 days before interstate movement, show no clinical signs of sickness (such as diarrhea, nasal discharge, ocular discharge, ruffled feathers, or lack of appetite) during the 90 days before interstate movement, and have been maintained apart from other birds and poultry in the quarantined area during the 90 days before interstate movement may be moved to a location outside the quarantined area for subsequent examination. The individual to whom the permit is issued must maintain ownership and control of the birds and maintain them apart from other birds and poultry from the time they arrive at the place to which the individual is taking them until a Federal representative or State representative [3] examines the birds and determines that the birds show no clinical signs of END. The examination will not be less than 30 days after the interstate movement. The individual to whom the permit is issued must allow Federal representatives and State representatives to examine the birds at any time until they are declared free of END by either a Federal veterinarian or a State veterinarian.

(ii) *All other pet birds.* Pet birds that do not meet the criteria in paragraph (a)(2)(i) of this section may only be moved to a USDA-approved quarantine facility outside the quarantined area for a 30-day quarantine before being released. The individual to whom the permit is issued must maintain ownership and control of the birds and maintain them isolated from other birds or poultry until the time they arrive at the USDA-approved quarantine facility. The pet bird owner is responsible for all costs associated for keeping his or her pet birds at the USDA-approved quarantine facility for the 30-day quarantine period.

(2) *Movement restrictions.* All pet birds must be moved interstate from a quarantined area under the following conditions:

(i) The birds are accompanied by a permit obtained in accordance with § 82.11.

(ii) The birds are moved interstate by the individual to whom the permit is issued.

(iii) The birds are caged while being moved interstate.

(iv) Within 24 hours of a bird’s dying or showing clinical signs of sickness (such as diarrhea, nasal discharge, ocular discharge, ruffled feathers, or lack of appetite), the individual to whom the permit is issued notifies the veterinarian in charge or the State animal health official [4] in the State to which the birds are moved.

(v) The individual to whom the permit is issued submits copies of the permit so that a copy is received by the State animal health official and the veterinarian in charge for the State of destination within 72 hours of the arrival of the birds at the destination listed on the permit.

(b) *Other birds (including commercial birds) and poultry.* Except as provided for pet birds in paragraph (a) of this section, a person may move live birds (including commercial birds) and live poultry that are not known to be infected with or exposed to END interstate from a quarantined area only if:

* * * * *

5. In § 82.6, paragraph (b) would be revised to read as follows.

§ 82.6 Interstate movement of dead birds and dead poultry from a quarantined area.

* * * * *

(b) Dressed carcasses from birds and poultry that are not known to be infected with END may be moved interstate from a quarantined area only if:

(1) The dressed carcasses are from birds or poultry that were slaughtered in a recognized slaughtering establishment;[5]

(2) The dressed carcasses have been processed in one of the following ways:

(i) They are packed in hermetically sealed containers and cooked by a commercial method after such packing to produce articles which are shelf stable without refrigeration; or

(ii) They have been thoroughly cooked and have a thoroughly cooked appearance throughout;

(3) If the dressed carcasses are from poultry, the processing establishment that treats the dressed carcasses in accordance with paragraph (b)(2) of this section employs the following safeguards:

(i) If receiving or handling any live poultry, there must be complete separation between the slaughter portion of the establishment and the portions of the establishment in which further processing takes place;

(ii) If the plant processes dressed carcasses from both quarantined and nonquarantined areas, all areas, utensils, and equipment likely to contact the poultry carcasses to be processed, including skimming, deboning, cutting, and packing areas, are cleaned and disinfected in accordance with part 71 of this chapter between the processing of dressed poultry carcasses from the quarantined area and the processing of dressed poultry carcasses from nonquarantined areas;

(iii) The dressed carcasses are stored in a manner that ensures that no cross-contamination with potentially infectious materials, such as raw or unprocessed products, occurs;

[3] The location of Federal representatives and State representatives may be obtained by writing to Emergency Programs, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 41, Riverdale, MD 20737–1231.

[4] The location of the veterinarian in charge or the State animal health official may be obtained by writing to Emergency Programs, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 41, Riverdale, MD 20737–1231, or by referring to the local telephone book.

[5] See footnote 5 to § 82.5.

(4) The dressed carcasses are accompanied by a permit obtained in accordance with § 82.11;

(5) The dressed carcasses are moved in a means of conveyance either under official seal or accompanied by a Federal representative;

(6) The dressed carcasses are not unloaded until their arrival at the destination listed on the permit required by paragraph (b)(4) of this section;

(7) The dressed carcasses are moved, without stopping, to the destination listed on the permit required by paragraph (b)(4) of this section, except for normal traffic conditions, such as traffic lights and stop signs; and

(8) Copies of the permit accompanying the dressed carcasses are submitted so that a copy is received by the State animal health official and the veterinarian in charge for the State of destination within 72 hours of the arrival of the dressed carcasses at the destination listed on the permit required by paragraph (b)(4) of this section.

* * * * *

6. Section 82.7 would be amended as follows:

a. By redesignating paragraphs (a), (b), (c), and (d) as paragraphs (a)(1), (a)(2), (a)(3), and (a)(4), respectively, and designating the introductory text of the section as paragraph (a).

b. In newly redesignated paragraph (a)(2), by adding the words ''or subjected to any other treatment approved by the Administrator as being adequate to prevent the dissemination of END'' after the words ''not less than 175 °F (79.4 °C).

c. By adding a new paragraph (b) to read as set forth below.

§ 82.7 Interstate movement of manure and litter from a quarantined area.

* * * * *

(b) Compost derived from manure generated by and litter used by birds or poultry known to be infected with END may be moved interstate from a quarantined area only if:

(1) The manure and litter is accompanied by a permit obtained in accordance with § 82.11;

(2) All birds and poultry have been removed from the premises where the manure or litter is held;

(3) After all birds are removed from the premises where the manure or litter is held, all manure and litter inside and outside the bird or poultry house remains undisturbed for at least 28 days before being moved from the infected premises for composting;

(4) Composting is done at a site approved by the Administrator and under a protocol approved by the Administrator as being adequate to prevent the dissemination of END. All manure and litter from the infected premises must be moved to the composting site at the same time;

(5) Following the composting process, the composted manure or litter remains undisturbed for an additional 15 days before movement;

(6) After this 15-day period, all of the composted manure or litter from the infected site is removed at the same time;

(7) The resulting compost must be transported in either in a previously unused container or in a container that has been cleaned and disinfected, since last being used, in accordance with part 71 of this chapter;

(8) The vehicle in which the resulting compost is to be transported has been cleaned and disinfected, since last being used, in accordance with part 71 of this chapter; and

(9) Copies of the permit accompanying the compost derived from the manure and the litter are submitted so that a copy is received by the State animal health official and the veterinarian in charge for the State of destination within 72 hours of arrival of the compost at the destination listed on the permit.

7. Section 82.8 would be amended as follows:

a. In paragraph (a)(2), by removing the citation ''7 CFR part 59'' and adding the citation ''9 CFR part 590'' in its place.

b. By revising paragraph (a)(3) to read as set forth below.

§ 82.8 Interstate movement of eggs, other than hatching eggs, from a quarantined area.

(a) * * *

(3) The establishment that processes the eggs, other than hatching eggs, for sale establishes procedures adequate to ensure that the eggs are free of END, including:

(i) The establishment separates processing and layer facilities, the incoming and outgoing eggs at the establishment, and any flocks that may reside at the establishment;

(ii) The establishment implements controls to ensure that trucks, shipping companies, or other visitors do not expose the processing plant to END;

(iii) Equipment used in the establishment is cleaned and disinfected in accordance with part 71 of this chapter at intervals determined by the Administrator to ensure that the equipment cannot transmit END to the eggs, other than hatching eggs, being processed; and

(iv) The eggs are packed either in previously unused flats or cases or in used plastic flats that were cleaned or disinfected, since last being used, in accordance with part 71 of this chapter;

* * * * *

8. Section 82.9 would be amended as follows:

a. In paragraph (b), by removing the word ''and'' at the end of the paragraph.

b. By redesignating paragraph (c) as paragraph (d).

c. By adding a new paragraph (c) to read as set forth below.

§ 82.9 Interstate movement of hatching eggs from a quarantined area.

* * * * *

(c) The hatching eggs have been kept in accordance with the sanitation practices specified in § 147.22 and § 147.25 of the National Poultry Improvement Plan; and

* * * * *

9. Section 82.14 would be amended as follows:

a. In paragraph (c)(2), in the introductory text, by revising the second sentence to read as set forth below.

b. In paragraph (e)(2), by removing the first sentence and by adding two new sentences in its place to read as set forth below.

c. By adding a new paragraph (i) to read as set forth below.

§ 82.14 Removal of quarantine.

* * * * *

(c) * * *

(2) * * * The birds and poultry must be composted according to the following instructions or according to another procedure approved by the Administrator as being adequate to prevent the dissemination of END:

* * * * *

(e) * * *

(2) *Composting.* If the manure and litter is composted, the manure and litter must be composted in the quarantined area. The manure and litter must be composted according to the following method, or according to another procedure approved by the Administrator as being adequate to prevent the dissemination of END: Place the manure and litter in rows 3 to 5 feet high and 5 to 10 feet at the base. * * *

* * * * *

(i) After the other conditions of this section are fulfilled, an area will not be released from quarantine until followup surveillance over a period of time determined by the Administrator indicates END is not present in the quarantined area.

* * * * *

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

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

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 94.6 [Amended]

11. In § 94.6, paragraph (b)(1) would be removed and reserved.

Done in Washington, DC, this 20th day of March 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–2864 Filed 3–24–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430 and 431

[Docket No. EE–2006–STD–0127]

RIN 1904–AB49

Energy Conservation Standards for Residential Electric and Gas Ranges and Microwave Ovens, Dishwashers, Dehumidifiers, and Commercial Clothes Washers: Public Meeting and Availability of the Framework Document

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting and availability of the Framework Document.

SUMMARY: The Department of Energy (DOE or Department) will hold an informal public meeting to discuss and receive comments on issues it will address in this rulemaking proceeding. The Department is also initiating the data collection process for establishing energy conservation standards for residential electric and gas ranges and ovens and microwave ovens, dishwashers, dehumidifiers, and commercial clothes washers. The Department also encourages written comments on these subjects. In addition, this effort is the result of the Energy Policy Act of 2005 (EPACT 2005) directive to publish a final rule to determine whether the standards established by EPACT 2005 should be amended no later than October 1, 2009, for dehumidifiers, and no later than January 1, 2010, for commercial clothes washers. To inform stakeholders and facilitate this process, DOE has prepared a Framework Document, a draft of which is available at: *http://www.eere.energy.gov/buildings/appliance_standards/.*

DATES: The Department will hold a public meeting on Thursday, April 27, 2006, from 9 a.m. to 5 p.m. in Washington, DC. Any person requesting to speak at the public meeting should submit a request to speak before 4 p.m, Thursday, April 13, 2006. The Department must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Thursday, April 13, 2006. Written comments are welcome, especially following the public meeting, and should be submitted by Thursday, May 11, 2006.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room GE–086 (Large Auditorium), 1000 Independence Avenue, SW., Washington, DC 20585–0121. (Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the workshop, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards-Jones at (202) 586–2945 so that the necessary procedures can be completed.)

Stakeholders may submit comments, identified by docket number EE–2006–STD–0127 and/or RIN number 1904–AB49, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *home_appliance.rulemaking@ee.doe.gov.* Include EE–2006–STD–0127 and/or RIN 1904–AB49 in the subject line of the message.
- Mail: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for Home Appliance Products, EE–2006–STD–0127 and/or RIN 1904–AB49, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed paper original.
- Hand Delivery/Courier: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking.

Docket: For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note that the Department's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–0371. E-mail: *bryan.berringer@ee.doe.gov.* Thomas DePriest, U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9507. E-mail: *Thomas.DePriest@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Part B of Title III of the Energy Policy and Conservation Act of 1975 (EPCA), 42 U.S.C. 6291 *et seq.*, established an energy conservation program for major household appliances, which includes residential electric and gas ranges and ovens and microwave ovens, and dishwashers. This program authorizes the Department to establish technologically feasible, economically justified energy-efficiency regulations for certain consumer products for which such regulations would incur substantial national energy saving, and for which both natural market forces and voluntary labeling programs have been and/or are expected to be ineffective in promoting energy efficiency. The National Energy Conservation Policy Act of 1978 (NECPA) amended EPCA to add Part C of Title III, 42 U.S.C. 6311 *et seq.*, which established an energy-conservation program for certain industrial equipment. Amendments to EPCA in