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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, and 95

[Docket No. APHIS-2006-0074]

RIN 0579-AC36

Highly Pathogenic Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with changes, an interim rule that amended the regulations concerning the importation of animals and animal products to prohibit or restrict the importation of live birds and poultry (including hatching eggs) and bird and poultry products from regions where any subtype of highly pathogenic avian influenza (HPAI) is considered to exist. The interim rule also added restrictions concerning importation of live birds and poultry that have been moved through regions where HPAI is considered to exist, or that have been vaccinated for certain types of avian influenza. This final rule amends the interim rule to allow the importation of live zoological birds and poultry that have been vaccinated for avian influenza as part of an official program and under specific conditions as determined by the Administrator and to allow the importation of HPAI-resistant pigeons, doves, and other Columbiform species under certain conditions from regions where HPAI is considered to exist. This action will provide for the importation of certain zoological birds and poultry under specified conditions designed to minimize the risk of introducing HPAI into the United States.

DATES: Effective [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. Javier Vargas, Case Manager, National Import Export Services, Animal Health Policy and Programs, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737; (301) 851-3300.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule<sup>1</sup> effective and published in the Federal Register on January 24, 2011 (76 FR 4046-4056, Docket No. APHIS-2006-0074), we amended the regulations in 9 CFR parts 93, 94, and 95<sup>2</sup> concerning the importation of animals and animal products to prohibit or restrict the importation of bird and poultry products from regions where highly pathogenic avian influenza (HPAI) is considered to exist by applying mitigations similar to those we use for Newcastle disease.<sup>3</sup> The interim rule included restrictions concerning importation of live birds and poultry (including hatching eggs) that have been vaccinated for certain types of avian influenza or that have been moved through regions where HPAI is considered to exist. In addition, the interim rule updated cooking requirements to specifically include carcasses, parts, or products of poultry or other birds from regions where HPAI is considered to exist. These actions were necessary to prevent the introduction of HPAI into the United States.

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<sup>1</sup> To view the interim rule, supporting documents, the May 2011 and June 2012 documents reopening the comment period, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2006-0074>.

<sup>2</sup> On December 4, 2013, we published another rulemaking, “Bovine Spongiform Encephalopathy; Importation of Bovines and Bovine Products” (78 FR 72980-73008) that redesignated the sections we amended in part 95 in the interim rule. These redesignations are reflected in this final rule.

<sup>3</sup> The interim rule used the term “exotic Newcastle disease” or “END.” In this document, we have removed the word “exotic” from the term to reflect changes made to the regulations in a final rule published March 29, 2013 (78 FR 19080-19085).

We solicited comments concerning the interim rule for 60 days ending March 25, 2011. We reopened the comment period<sup>4</sup> for 15 days ending May 18, 2011, to give commenters more time to respond. We reopened the comment period a second time<sup>5</sup> for 30 days ending July 12, 2012, to solicit comments on allowing the importation of pigeons, doves, and other Columbiform species from regions considered to have HPAI after establishing that importation of these species poses a low risk of introducing HPAI into the United States.

We received a total of 19 comments during those three comment periods. Commenters included a State veterinary official, a foreign government official, veterinarians, associations representing U.S. zoos and zoo veterinarians, an ornithological research organization, egg industry representatives, a restaurant chain, and the general public. A consumer food safety organization commented by submitting a letter with 17,540 copies signed by members of the public.

We have carefully considered the comments we received. Three commenters expressed concerns about the risk of HPAI but did not substantively address any specifics of the interim rule. The remaining comments are discussed below by topic.

#### General Comments

One commenter objected to our issuing an interim rule instead of a proposed rule, noting that we made effective the action to prohibit or restrict the importation of live birds and poultry, and bird and poultry products, from regions where HPAI is considered to exist without first soliciting public comments.

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<sup>4</sup> Federal Register, May 3, 2011 (76 FR 24793, Docket No. APHIS-2006-0074).

<sup>5</sup> Federal Register, June 12, 2012 (77 FR 34783-34784, Docket No. APHIS-2006-0074).

Immediate action was necessary to prevent the introduction of HPAI into the United States. Under those circumstances, we determined that prior notice and opportunity for public comment were contrary to the public interest and that there was good cause under 5 U.S.C. 553(b)(B) for making the interim rule effective upon publication in the Federal Register.

In the interim rule, we requested comment on whether the list of regions considered to be free of Newcastle disease in 9 CFR 94.6(a)(1) should be removed from the regulations and posted on the Animal and Plant Health Inspection Service (APHIS) Web site, as we have done with similar lists of regions.

Two commenters agreed with the idea and no commenters objected.

Accordingly, this final rule amends the regulations to remove the list of regions considered to be free of Newcastle disease from 9 CFR 94.6(a)(1)(i) and adds text referring readers to the list on the APHIS Web site.<sup>6</sup>

A region will be removed from the list of regions considered to be free of Newcastle disease whenever we receive reliable reports of disease outbreaks in commercial birds and poultry from veterinary officials of the national government of the region and/or the World Organization for Animal Health (OIE). The Administrator of APHIS may also remove a region from the list based on outbreak reports of Newcastle disease that he or she receives from other reliable sources, such as APHIS inspectors based in foreign countries. This approach will allow us to quickly update the list on the Web site whenever necessary without needing to amend the CFR, which can take much more time to do.

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<sup>6</sup> [http://www.aphis.usda.gov/import\\_export/animals/animal\\_disease\\_status.shtml](http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml).

A region removed from the list of regions considered to be free of Newcastle disease on the APHIS Web site may be reinstated to the list in accordance with the procedures for reestablishing a region's disease-free status set forth in 9 CFR 92.4 of the regulations.

#### Importation of Live Birds and Poultry

The importation into the United States of live birds and poultry, including eggs for hatching, is subject to the regulations in part 93, Subpart A—Birds (§§ 93.100-93.107) and Subpart B—Poultry (§§ 93.200-93.220).

A commenter requested that APHIS provide an exception to its prohibition on live birds and poultry from regions where HPAI is considered to exist by permitting the entry of birds and poultry that have been quarantined and tested prior to export to the United States in a manner consistent with our own post-import quarantine and testing procedures.

We are taking no action in response to this request. Our established import quarantine procedures have been proven to be effective and offer a predictable measure of assurance supported by testing in approved laboratories using appropriate diagnostic methods. Quarantine and testing procedures conducted overseas may not always adequately address APHIS requirements and would be impractical and resource-intensive.

However, we have determined that it is necessary to amend the live bird and poultry regulations in the interim rule to reflect changes we made in another rulemaking. In a March 2013 final rule that recognized 25 Member States of the European Union (EU) as the APHIS-defined EU poultry trade region<sup>7</sup>, we amended the regulations to allow the importation of hatching eggs that have transited a zone restricted for HPAI within that region. To make the

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<sup>7</sup> Federal Register, March 29, 2013 (78 FR 19080-19085, Docket No. APHIS-2009-0094): <http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0094>.

regulations consistent with this change, we are amending the general prohibitions in 9 CFR 93.101(a) for birds and hatching eggs of birds, and 9 CFR 93.201(a) for poultry and hatching eggs of poultry, to indicate that unless specifically indicated otherwise in the regulations,<sup>8</sup> no live birds or poultry, and no hatching eggs from birds or poultry, shall be imported into the United States if the birds or poultry (or the flocks of origin in the case of hatching eggs) originated from or transited a region identified in accordance with 9 CFR 94.6(a) as a region where any form of HPAI or Newcastle disease is considered to exist. As 9 CFR 93.201(a) prohibits importation of hatching eggs of poultry that have originated in or transited regions where these diseases exist other than the APHIS-defined EU poultry trade region, we are also amending 9 CFR 93.205(b) to require that the import certificate state that the hatching eggs have not been moved through a region identified in accordance with § 94.6(a) as a region where any form of HPAI exists. This statement is already required on certificates for live poultry in 9 CFR 93.205(a).

We are also amending paragraphs (b)(7), (c)(11), and (d)(7) of the certification requirements for importing live birds in 9 CFR 93.104 to replace “previously unused containers” with “new or appropriately sanitized packaging materials.” Similarly, we are amending paragraphs (a) and (b) of 9 CFR 93.205 to make this same change in the certification requirements for importing live poultry and hatching eggs of poultry. This change allows for more flexible packaging options and provides additional risk mitigation for imported poultry and hatching eggs.

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<sup>8</sup> The Administrator, under 9 CFR 93.101(a), may also allow pet or other birds to transit regions where any form of HPAI is considered to exist, under stipulated conditions provided in a permit, when a determination is made that such importations will not endanger livestock or poultry health in the United States.

Finally, to emphasize that testing for avian influenza is currently a part of our routine health certification and quarantine requirements for imported birds, we are amending these requirements in 9 CFR 93.101, 93.104, and 93.106 to include references to avian influenza.

Importation of Columbiform Species from Regions where HPAI is Considered to Exist

As noted above, we reopened the comment period on the interim rule for 30 days<sup>9</sup> to solicit comments on a change that would allow live pigeons, doves, and other Columbiform species to be imported under certain conditions to approved establishments from regions where HPAI is considered to exist. We considered this change because peer-reviewed scientific studies<sup>10</sup> have come to our attention since the publication of the interim rule establishing that Columbiform species have a very low risk of being infected by HPAI viruses. We have carefully reviewed these studies and concluded that importation of such species to approved establishments would constitute a low risk of introducing and spreading HPAI viruses in birds and poultry.

One commenter, a State veterinary official, stated that there appear to be no restrictions in the rule on how Columbiform species are to be housed and transported within a zone where HPAI is considered to exist. The commenter stated that non-Columbiform species of birds and poultry could be crated next to Columbiform species during transport and be on- and off-loaded from or within the zones of infection. The commenter added that even though Columbiform species from HPAI-affected regions have a low risk of becoming infected, those species and

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<sup>9</sup> See footnote 5.

<sup>10</sup> Infectious and Lethal Doses of H5N1 Highly Pathogenic Avian Influenza Virus for House Sparrows (*Passer Domesticus*) and Rock Pigeons (*Columbia Livia*) J VET Diagn Invest July 2009 21: 437-445. Pathogenesis and pathobiology of avian influenza virus infection in birds, M. J. Pantin-Jackwood and D. E. Swayne, Southeast Poultry Research Laboratory, Agricultural Research Service, USDA, Athens, GA 30605.

their crates could serve as fomites and transmit the virus to more susceptible species of avians if commingled with them at any point during importation or quarantine. For this reason, the commenter requested that we not allow importation of any Columbiform species that have been moved through regions where HPAI is considered to exist.

While it is possible that Columbiform species could transmit the HPAI virus to non-Columbiform species via fomites, we consider our existing risk mitigations regarding fomites and commingling sufficient to allow importation of Columbiform species that have been moved through regions with HPAI. Title 9 CFR 93.204 establishes that for the importer to obtain a permit, he or she must provide information that includes the species, breed, and number of poultry to be imported and the region of origin, as well as the mode of transportation and the route of travel. APHIS would not issue an import permit if the conditions of importation were such that Columbiform species (and their fomites) from regions considered to have HPAI were commingled, quarantined, or otherwise directly or indirectly exposed at any point with non-Columbiform species.

However, we acknowledge the commenter's concern about commingling and are adding a provision to the certificate requirement to 9 CFR 93.205(a) for Columbiform species that have been moved through regions considered to have HPAI. Except for the requirement prohibiting movement through such regions, Columbiform species intended for importation into the United States are subject to all other certificate requirements listed in 9 CFR 93.205(a) as amended by this document. The certificate requirement we are adding to 9 CFR 93.205(a) states that pigeons, doves, and other Columbiform species that have originated from or been moved through regions where HPAI is considered to exist were moved and handled under conditions specified on an

import permit ensuring that their movement and handling involved no direct or indirect exposure to other animals, birds, and poultry.

Prohibition on Day-Old Chicks and Hatching Eggs Transiting Regions where HPAI is Considered to Exist

Three commenters opposed the prohibition in the interim rule on the importation into the United States of day-old chicks and hatching eggs that have transited regions where HPAI of any subtype is considered to exist.

One commenter stated that day-old chicks are commonly flown in sealed containers between continents and expressed concern about whether such chicks would still be eligible for importation into the United States if the flight touched down briefly at an airport in a region considered to have HPAI. Another commenter noted that EU regulations allow transit of live poultry, including day-old chicks and hatching eggs, through zones under restrictions for HPAI on the condition that transport takes place on roads or rail without unloading or stopping. The commenter stated that if the day-old chicks are moved under strictly controlled, biosecured, and air-conditioned circumstances, with no need to provide feed and water during transport, the risk of their exposure to HPAI is minimal.

We disagree with the commenters with regard to importing day-old chicks that have transited regions where HPAI is considered to exist. Unlike Columbiform species, day-old chicks of other poultry species are highly susceptible to contracting HPAI and therefore more likely to harbor and transmit the virus to other birds or poultry. Water or feed present during transit may also become contaminated. Scientific evidence indicates that secondary spread of avian influenza viruses mainly occurs through mechanical transfer of feces from infected birds, in which the virus may be present at high concentrations and may survive for considerable

periods, and that the virus may be spread by birds, poultry, or other animals not themselves susceptible to infection becoming contaminated in transit through contact with infected birds and poultry<sup>11</sup> (which is why, as a condition of entry, Columbiform species will not be allowed to be commingled with birds of any other species during transport). Consequently, there is a significant risk of day-old chicks contracting HPAI if they are moved through regions where HPAI is considered to exist en route to the United States.

While we consider movement of day-old chicks through regions affected by HPAI to pose an unacceptable import risk, we acknowledge that hatching eggs can be moved through regions affected by HPAI at a sufficiently low level of risk if we determine that the controlling authority of that region has instituted sufficient risk mitigation measures. Accordingly, in a March 2013 final rule<sup>12</sup> that recognized 25 Member States of the EU as the APHIS-defined EU poultry trade region, we amended the regulations to allow the importation of hatching eggs that have transited a zone restricted for HPAI within that region. Given the control measures that are uniformly and effectively enforced by the EU, the risk of exposure of hatching eggs to HPAI while transiting zones within the APHIS-defined EU poultry trade region is very low as long as all measures in the import permit issued by APHIS are followed and the shipment is sealed by the veterinary competent authority. All hatching eggs must be quarantined from time of arrival at the port of entry until hatched as required in 9 CFR 93.209, and the poultry from such eggs will remain quarantined for not less than 30 days following hatching. During their quarantine, eggs for hatching and poultry from such eggs will be subject to any inspections, disinfections, and tests as may be required by APHIS to determine their freedom from HPAI and other

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<sup>11</sup> World Organization for Animal Health, Draft Report of the Meeting of the OIE Ad Hoc Group on Avian Influenza, Paris, 12-14 November 2003.

<sup>12</sup> See footnote 7.

communicable diseases of poultry. Otherwise, hatching eggs that have originated from any region affected with HPAI will remain prohibited from importation to the United States.

#### Prohibitions on Birds Vaccinated for Avian Influenza

The interim rule prohibited imports of live poultry that have been vaccinated for H5 or H7 subtypes of avian influenza, as well as imports of day-old chicks and hatching eggs that have been vaccinated or have originated from birds or poultry vaccinated with those subtypes.

Several commenters opposed the import prohibitions we placed on HPAI-vaccinated poultry and hatching eggs.

Two commenters representing the domestic egg industry stated that vaccination for HPAI can be part of an effective disease control program and, for this reason, requested that we reconsider our prohibition on importation of egg layer hatching eggs from vaccinated poultry.

We are making no changes to our prohibition on importation of hatching eggs from poultry vaccinated for HPAI. We noted in the interim rule that vaccination could mask the presence of infection in imported poultry and that vaccinated poultry and hatching eggs would have antibodies to serotypes H5 or H7 detectable during quarantine or routine surveillance. The presence of antibodies in imported poultry and hatching eggs could result in uncertainty as to whether the antibodies originated from vaccination or exposure to HPAI serotypes.

Another commenter stated that diagnostic testing could distinguish antibodies in vaccinated poultry from those acquired from exposure to the HPAI virus, thus eliminating uncertainty as to whether the poultry acquired avian influenza antibodies through vaccination or through natural exposure to the virus.

We are making no changes in response to the comment. We acknowledge that diagnostic methods exist that can distinguish those antibodies created by natural exposure to the virus from

those created through vaccination. However, this process, known as DIVA (differentiation of infected from vaccinated animals), has not been sufficiently validated in the field or across avian species.

Another commenter suggested that prohibiting the importation of hatching eggs from vaccinated poultry is unnecessary because embryos infected with lethal strains of HPAI typically die prior to hatching.

We are making no changes based on this information. It is true that transmission of lethal strains of avian influenza via hatching eggs to other birds would be unlikely if the embryos die and fail to hatch. However, broken, contaminated eggs may possibly infect chicks inside the incubator because live virus can be recovered from the eggshell and internal egg contents.

Another commenter opposing the vaccination prohibitions on poultry and hatching eggs noted that other countries sometimes use vaccination to help control H5 and H7 strains of low pathogenic avian influenza (LPAI). The commenter added that APHIS approved use of such vaccines to control a 2002 outbreak of H7N2 LPAI in Virginia.

We are making no changes based on this comment. Emergency vaccination for some avian influenza subtypes may be necessary to control outbreaks if administered under specific conditions and under direct control of veterinary authorities. However, we would not likely allow the export of such emergency vaccinated poultry from the United States, nor would we allow the importation of poultry vaccinated for avian influenza due to the vaccination-related issues discussed above. Only if we were to incorporate the use of vaccinations for H5 and H7 subtypes of avian influenza as routine practice would we reconsider modifying restrictions on the importation of most classes of poultry that have been vaccinated.

Two commenters representing organizations affiliated with U.S. zoos indicated that they import live birds and hatching eggs from throughout the world for the purposes of species preservation and scientific study. They stated that the import prohibition on live birds and hatching eggs vaccinated for avian influenza would adversely affect their ability to import live, zoological birds from other countries. The commenters noted that some foreign zoos already vaccinate zoological birds with avian influenza vaccines as part of their own government programs. The commenters added, however, that their member zoos and other facilities maintain extensive biosecurity and quarantine protocols to ensure that any animal entering their collections is examined and kept in secure facilities to contain any potential disease threat. They stated that, as a result, the risk of introducing HPAI into the United States through such birds is low and asked that we allow importation of zoological birds under such protocols.

We agree with these commenters and are amending 9 CFR 93.104(b)(4) in this final rule to allow live, zoological avians (including some species we define as ‘poultry’) that have been vaccinated for H5 or H7 subtypes of avian influenza to be imported to approved facilities. In this limited exception, such avians may be imported under specific permit restrictions if they are part of an official program using vaccine products approved and used under the supervision of the veterinary authorities of the exporting country and under specific conditions as determined by the Administrator and included in the import permit. The avians will also be required to be exported with permanent individual identification and meet other certification or entry requirements, including official testing and quarantine on arrival to the United States.

Restrictions on Imports of Bird and Poultry Carcasses, Meat, and Products from Regions where HPAI is Considered to Exist

In the interim rule, most of the Newcastle disease-related provisions in 9 CFR 94.6(b) governing importation of bird and poultry carcasses, and parts or products of carcasses, were also applied to importation of those items from regions where HPAI is considered to exist.

Historically, nearly all foreign regions where HPAI is considered to exist have also been regions where Newcastle disease has existed, so until the interim rule was published, the provisions for Newcastle disease were being applied de facto to HPAI. In the interim rule, we specifically revised those provisions to cover HPAI independent of Newcastle disease. The increasing number of outbreaks of HPAI worldwide has increased the likelihood that the disease could emerge in a region where Newcastle disease has never existed and pose a risk to the United States through the importation of birds, poultry, or bird or poultry products from that region.

While the interim rule specifically applied most of the import provisions for Newcastle disease to HPAI, it did not apply those in 9 CFR 94.6(b)(1) regarding game birds, which state that carcasses of game birds, if eviscerated with heads and feet removed, may be imported from regions where Newcastle disease is considered to exist. We stated in the interim rule that we would consider comments on whether we should apply the same conditions to importation of carcasses of game birds from regions with HPAI.

A commenter stated that the interim rule fails to provide science-based information to show that the restrictions in the regulations sufficiently mitigate either Newcastle disease or HPAI in game birds. The commenter noted that Newcastle disease virus can be found in all parts of the carcass, and that removal of the head, feet, and viscera is insufficient to prevent introduction of the virus into the United States. The commenter suggested that we remove the

Newcastle disease-based game bird provisions from the existing regulations and not extend those provisions to apply to game birds from HPAI regions.

We are making no changes based on the comment. Our experience has shown the disease risk to domestic birds and poultry to be minimal from allowing entry of hunter-harvested carcasses of game birds, intended only for personal consumption and with head, feet, and viscera removed, from regions where Newcastle disease is considered to exist.<sup>13</sup> The number of carcasses imported from such regions historically has been very small and the carcasses are prohibited from entering into commercial channels. However, we continue to evaluate the potential risk to domestic birds and poultry from allowing entry of hunter-harvested carcasses of game birds from regions where HPAI is considered to exist. If we determine that entry of such carcasses from regions with HPAI can occur with sufficient mitigation of risk, we will publish our determination in a future rulemaking. We note that we consider game bird carcasses for personal consumption to be distinct from game bird trophies, which unlike carcasses are allowed entry into the United States from regions affected by HPAI because we require the trophies to be consigned directly under official seal to approved establishments for processing.<sup>14</sup>

An organization representing scientists and others who import ornithological specimens for scientific study opposed our decision to restrict the importation of bird and poultry carcasses, parts, and products from regions where HPAI is considered to exist. The commenter stated that

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<sup>13</sup> Importation of such carcasses is also subject to verification of the import documentation by a U.S. Fish and Wildlife Service (FWS) officer. Information on FWS requirements for bringing game birds can be found at: <http://www.fws.gov/le/hunting.html>.

<sup>14</sup> Requirements for importing bird trophies from regions where Newcastle disease or HPAI is considered to exist are addressed in 9 CFR 95.17. Such trophies do not require an import permit but are required to be moved under official seal to approved establishments. Entry requirements for bird trophies imported from regions free of Newcastle disease and HPAI are addressed in 9 CFR 95.16.

some strains of avian influenza considered to be highly pathogenic based on their molecular characteristics do not present signs of virulence in infected poultry. The commenter suggested that restrictions could be lifted from an HPAI-affected region if diagnostic tests of the avian influenza strain show no signs of virulence.

We are making no changes to this final rule in response to the comment. It is our determination that virulence cannot be adequately ruled out through testing or a lack of observed symptoms in a population of birds or poultry. H5 and H7 strains of avian influenza can have widely varying pathogenic effects on different populations of birds or poultry and are subject to mutations that can change them into virulent strains. However, we note that provisions exist for the importation of ornithological specimens for scientific study. Paragraph (b)(2) of § 94.6 allows carcasses, or parts or products of carcasses, of poultry, game birds, and other birds to be imported for consignment to any museum, educational institution, or other establishment which has provided the Administrator with evidence that it has the equipment, facilities, and capabilities to store, handle, process, or disinfect such articles so as to prevent the introduction or dissemination of Newcastle disease or HPAI into the United States, and which is approved by the Administrator.

A consumer safety organization objected to the interim rule, stating that it was concerned that the rule lifts import restrictions APHIS had placed on all poultry products from regions where HPAI is considered to exist, particularly the People's Republic of China.

The interim rule did not lift import restrictions on poultry products from any region where HPAI is considered to exist. On the contrary, the interim rule applied the restrictions in 9 CFR 94.6(b) for unprocessed carcasses and parts or products of unprocessed carcasses of poultry or other birds from regions where Newcastle disease is considered to exist to regions

where HPAI is considered to exist. These items are not eligible for import except when deemed appropriate by APHIS for scientific, educational, or research purposes, and must undergo processing conditions that ensure destruction of these viruses, if present. Carcasses of poultry or other birds that originated in a region considered to be free of Newcastle disease and HPAI, but that are processed (cut, packaged, or other processing) in a region where Newcastle disease or HPAI is considered to exist, are only eligible for import if they have been cooked or otherwise processed in such a way as to ensure destruction of Newcastle disease and avian influenza viruses, and if the processing establishments from which they come satisfy all the requirements in 9 CFR 94.6(b)(5). In deciding whether to approve a processing establishment, we determine the establishment's compliance with APHIS animal health requirements and the United States Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) evaluates the exporting region's processing methods for products for human consumption under the Poultry Products Inspection Act. If the processing establishments of any country or region do not meet both APHIS and FSIS requirements, those establishments are not permitted to export bird and poultry meat and products to the United States.

#### Cooking and Egg Pasteurization Requirements

Prior to the interim rule, we required in 9 CFR 94.6(b) that cooked carcasses, parts, or products of poultry or other birds from regions considered to have Newcastle disease "have a thoroughly cooked appearance throughout." Based on our review of OIE recommendations, we revised our cooking requirements to be more effective against both HPAI and Newcastle disease viruses. Accordingly, in the interim rule, we amended 9 CFR 94.6(b)(4) to establish a single standard stating that the articles must be cooked to a minimum internal temperature throughout

of 74 °C (165 °F). This requirement replaced the previous standard that required confirmation by an inspector that the poultry appeared to be thoroughly cooked.

Four commenters disagreed with our establishment of a single cooking standard. One stated that application of any of the appropriate OIE cooking standards will result in products with negligible disease risk. Another commenter agreed, adding that cooking with the intention of eliminating avian influenza viruses is dependent on both cooking temperature and time. Another commenter noted that there may be certain products where heating to 74 °C is not sufficient and that for those products additional cooking standards might need to be considered. A commenter also requested that APHIS apply the cooking requirement only to imported bird and poultry products intended for consumption and not to products imported for scientific purposes, which have their own heat treatment requirements.

The cooking regulations we established in the interim rule are intended to simplify the cooking process by mitigating the risks of HPAI and Newcastle disease viruses in cooked poultry products under a single standard. We have determined that a cooking temperature of 74 °C is sufficient to mitigate both viruses. If we determine that the regulations need to be amended to allow alternative processing standards in products intended for consumption or scientific purposes, we will consider that change in a future rulemaking. We will also consider alternative cooking and heat treatment approaches that are scientifically supportable and meet international standards. We will work with industry and researchers to validate other standards and welcome specific information to help us develop such standards. We will also harmonize procedures with FSIS to verify that their public health standards are also suitable for inactivating HPAI and Newcastle disease viruses.

Two commenters asked that we also include OIE egg pasteurization standards in the regulations.

We do not consider it necessary to include such standards in the regulations. As with poultry meat and products, APHIS currently applies international standards for egg products that are validated by USDA researchers and harmonizes its procedures with FSIS whenever possible.

#### Cooked Poultry Meat in Passenger Baggage

One commenter noted that the changes to the interim rule do not provide clear guidance on the importation requirements for cooked poultry meat entering the United States in passenger baggage. The commenter stated that if APHIS intends to apply the cooking requirement that we included in the interim rule, then we should specify whether this requirement applies only to commercially imported poultry meat and poultry products, including table eggs, or whether it also extends to cooked poultry meat in passenger baggage.

On the same subject, another commenter disagreed with how we implemented the change in the interim rule to the cooking regulations, which requires official certification stating that the proper cooking temperature had been applied to accompany all cooked carcasses, parts, or products of poultry or other birds entering the United States from regions where Newcastle disease or HPAI is considered to exist. The commenter stated that we did not adequately inform Department of Homeland Security, Customs Border and Protection (CBP) inspectors or the traveling public about this change, resulting in disruptions at ports of entry as CBP officials were not adequately prepared to manage the large quantity of uncertified cooked poultry meat and eggs seized in passenger baggage as a result of enforcement of the interim rule. To address this situation, a commenter representing an international restaurant chain requested that we amend

the cooking regulations in 9 CFR 94.6(b)(6) to include an exception for perishable cooked poultry products intended for personal consumption in passenger baggage.

After we published the new cooking regulations, we recognized that it was impractical to require passengers entering the country to produce a cooking certificate for non-commercial quantities of perishable, thoroughly cooked poultry intended for personal consumption. We determined from experience that such importations pose an insignificant risk to domestic birds and poultry. Accordingly, we published in the APHIS Animal Products Manual a directive<sup>15</sup> that CBP inspectors may permit entry of cooked and perishable poultry products for personal consumption if, in the view of the inspector, the products appear to be thoroughly cooked throughout. If the products do not appear in the inspector's determination to be thoroughly cooked or intended for personal consumption, entry of the product will be denied. We believe that this directive is reliable since we allow inspectors in other cases to draw on their experience and judgment to determine whether a product is sufficiently processed to minimize risk. Accordingly, we will proceed with this directive but we plan to include this exception for cooked poultry in the regulations in the future.

#### Table Eggs from Regions where HPAI is Considered to Exist

One commenter noted that while the interim rule clearly explained how we changed the regulations for importing poultry products and byproducts from regions where HPAI is considered to exist, the regulations provide no clear guidance as to whether this change applies to table eggs and egg products (other than hatching eggs) from such regions.

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<sup>15</sup> [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/apm.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/apm.pdf). See footnote 1, Table A-1-10.

In the interim rule, we made no changes to 9 CFR 94.6(c), which lists import requirements for table eggs from regions where Newcastle disease is considered to exist. We solicited comments in the interim rule on whether a targeted testing program for HPAI in egg flocks in foreign regions is advisable and how such a program might be designed to provide a statistically valid testing regimen. We noted that those who wish to comment on this issue should also review a final rule we published in the Federal Register on April 22, 2009 (“Importation of Table Eggs From Regions Where Exotic Newcastle Disease Exists,” Docket No. APHIS-2007-0014; 74 FR 18285-18288). That document amended 9 CFR 94.6(c) to include a protocol for targeted Newcastle disease testing of a statistically valid sample of dead, dying, and cull birds. It would also be possible to create such a targeted testing program for HPAI, although the sample sizes, type of tests, and other technical details would vary. In the future, we intend to use the same process to develop regulations for importation of table eggs from HPAI regions, beginning with a risk assessment that reviews the testing options. This assessment would be made available for public comment.

However, we are adding language to § 94.6 (c) to clarify that table eggs from HPAI regions are prohibited from importation, except by APHIS permit to approved establishments for breaking and pasteurization, for scientific, educational, or research purposes, or for other purposes determined by the Administrator, provided that the eggs have been cooked, processed, or otherwise handled in a manner that will prevent the introduction of both Newcastle disease and HPAI into the United States.

Three commenters recommended that APHIS consider adopting provisions of the Secure Egg Supply (SES) plan for imports of poultry and egg products to the United States, and one commenter recommended that we modify 9 CFR 94.6(c) to require exporting countries to

implement systems equivalent to the SES plan as a condition for continuing exports to the United States should those countries have HPAI outbreaks. The SES plan implements levels of heightened biosecurity, additional testing, and other emergency measures during a disease outbreak.

We believe that the adoption of such broad emergency measures in this context is not necessary. Incorporating provisions of the SES plan into general guidance under normal trade conditions is unnecessary and would be potentially burdensome to domestic egg producers.

#### Additional Treatments for Research Specimens

A commenter interested in the scientific study of birds asked that we make it easier to access approved treatment methods that are currently established as conditions for obtaining an import permit and requested that we make such information available on the APHIS Web site.

For specific information regarding approved treatment methods, please contact National Import Export Services at (301) 851-3300, or send an e-mail to [AskNCIE.Products@aphis.usda.gov](mailto:AskNCIE.Products@aphis.usda.gov). A search engine listing approved establishments where such treatment methods are administered is available online at:

<https://vsapps.aphis.usda.gov/vsps/public/AESearch.do?method=unspecified>.

The same commenter requested that we also consider another process for importing untreated material of avian origin, noting that current treatment requirements somewhat degrade materials intended for research and asked that we consider establishing a procedure for pre-import testing of the material in a laboratory and with methods equivalent to those used by USDA labs.

We welcome scientific information that supports other processes for testing, handling, and importing untreated avian material in such a manner that minimizes the risk of introducing

H5N1 or other avian diseases. Other procedures will be considered in the future on a case-by-case basis.

### Regionalization

Two commenters, including an official representing the EU, stated that APHIS uses the term “region” to refer only to the whole territory of a country and not to a part of a country, and recommended that we include regionalization as part of our regulations to be in line with OIE recommendations.

We currently recognize regions that span countries and parts of countries for animal disease control purposes and which are based on geographic considerations instead of national boundaries, as recommended by the OIE. In the past, APHIS has removed from that list several subnational regions consisting of either single or several administrative units or groups within the EU that were affected by H5N1.<sup>16</sup>

### Disease Terms

A commenter questioned our use of the term “exotic” in conjunction with “Newcastle disease,” noting that it does not conform to OIE usage, and also requested that we replace the term “European fowl plague” with “highly pathogenic avian influenza” in our regulations, noting that the latter term is more in line with international usage.

APHIS agrees with the commenter’s suggestions. In another rulemaking,<sup>17</sup> we have since removed the word “exotic” from references to Newcastle disease and replaced the terms “fowl pest” and “fowl plague” with “highly pathogenic avian influenza.” The word “exotic” is no

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<sup>16</sup> The subnational regions removed include areas within Denmark and France (July 21, 2008); Germany (June 5, 2009 and September 23, 2009); Poland (June 5, 2009); United Kingdom (September 23, 2009); Hungary (September 24, 2009); and the Czech Republic and Sweden (November 10, 2010).

<sup>17</sup> See footnote 7.

longer a useful description of Newcastle disease, and the terms “fowl pest” and “fowl plague” predate identification of the avian influenza virus and are no longer commonly used in scientific discourse. This change is consistent with our previous efforts to replace these outdated terms in other parts of our regulations and reflects OIE terminology.

### Other Changes

We are making other changes to the regulations to provide readers with additional information about terms we use in the regulations. We are adding a definition of approved establishment to 9 CFR 94.0. This term refers to establishments authorized by APHIS for the receipt and handling of restricted imported animal carcasses, trophies, products, and byproducts. We are adding this term in order to distinguish such establishments from “processing establishments” that process meat, fish, and poultry intended for human consumption. We are also adding a definition of commercial birds to 9 CFR 94.0 in order to distinguish birds imported for resale, breeding, public display, or any other purpose from birds imported for zoological or research purposes, performing or theatrical purposes, and as pets. In addition, we are adding a similar definition for commercial poultry to 9 CFR 93.200 and 94.0 to distinguish such poultry from other types recognized in the regulations. We are also revising the definition of highly pathogenic avian influenza in 9 CFR 94.0 to harmonize it with OIE standards and adding that definition to 9 CFR 93.100, 93.200, and 95.1, as we now use that term in those regulations. We are adding a definition of quarantine facility to 9 CFR 93.100 of Subpart A—Birds and 9 CFR 93.200 of Subpart B—Poultry because we include requirements for quarantine facilities in those subparts but provide no definition of the term.

We are also amending the list of disease agents (anthrax, foot-and-mouth disease, and rinderpest) in 9 CFR 95.3 to clarify that importation of byproducts taken or removed from any

animal affected with Newcastle disease or HPAI are specifically prohibited. Under amended 9 CFR 95.17 we will allow products such as bird trophies from HPAI regions to be consigned directly to an approved establishment, as is currently the case with bird trophies from regions with Newcastle disease. Such trophies consigned directly to an approved establishment do not require an import permit. Therefore, we are removing 9 CFR 95.41 from the regulations because the import permit required in that section specifically for bird trophies from HPAI regions is no longer necessary.

Finally, we are correcting an incorrect reference in § 94.6. Currently, paragraph (c)(3) states the requirements for the importation of eggs for scientific, educational, or research purposes and that the eggs must be accompanied by a permit obtained from APHIS in accordance with paragraph (f) of that section. Paragraph (f) was removed in a prior rulemaking and the instructions for obtaining a permit are currently contained in paragraph (d). We are correcting that reference.

#### Addition of Bhutan to the List of Regions in which HPAI is Considered to Exist

We are also announcing that we have added Bhutan to the list of regions referenced in 9 CFR 94.6(a)(2)(i) in which HPAI is considered to exist because we have determined that HPAI exists in commercial birds or poultry in the country based on veterinary reports of disease outbreaks.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

#### Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the Federal Register. The

interim rule adopted as final by this rule became effective on January 24, 2011. This rule relieves a restriction in the interim rule that prohibits the import of birds vaccinated for avian influenza subtypes H5 or H7 by permitting the import of vaccinated zoological birds to approved facilities under controlled conditions. This rule also relieves a restriction that prohibits the importation of HPAI-resistant pigeons, doves, and other Columbiform species by permitting the import of such species, under permit and controlled conditions, from regions where HPAI is considered to exist. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the Federal Register.

#### Executive Order 12866 and Regulatory Flexibility Act

This final 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 have prepared an economic analysis for this rule. The economic analysis, which is summarized below, examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

To prevent the introduction of HPAI into the United States, APHIS published an interim rule that amended the regulations in 9 CFR parts 93, 94, and 95 to prohibit or restrict the importation of birds and poultry products from regions where HPAI exists. APHIS is adopting the rule with changes: The final rule will allow the importation of live zoological birds vaccinated for HPAI under controlled conditions to approved facilities and allow the importation of pigeons, doves, and other Columbiform species resistant to HPAI under permit and controlled conditions from regions where HPAI is considered to exist.

Because of the substantial overlap between existing restrictions to prevent the importation of articles that could introduce Newcastle disease and the new restrictions to prevent the importation of articles that could introduce HPAI, this final rule is not expected to have significant economic impacts on small entities. The rule will benefit U.S. poultry and egg producers by protecting domestic flocks against the introduction of HPAI. Consumers and importers will not be significantly affected by any changes in imports that may result because of the rule, as poultry and poultry product imports are minor compared to domestic production. Compliance costs will be incurred only with respect to imports from regions where HPAI is discovered and there are no existing restrictions for HPAI or Newcastle disease.

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

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Has no retroactive effect and (2) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0245 (formerly 0579-0367).

## E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

## List of Subjects

### 9 CFR Part 93

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

### 9 CFR Part 94

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

### 9 CFR Part 95

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

Accordingly, the interim rule amending 9 CFR parts 93, 94, and 95 that was published at 76 FR 4046-4056 on January 24, 2011, is adopted as a final rule with the following changes:

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

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

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

2. Section 93.100 is amended by adding, in alphabetical order, definitions of highly pathogenic avian influenza (HPAI) and quarantine facility to read as follows:

§ 93.100 Definitions.

\* \* \* \* \*

Highly pathogenic avian influenza (HPAI). Highly pathogenic avian influenza is defined as follows:

(1) Any influenza virus that kills at least 75 percent of eight 4- to 6-week-old susceptible chickens within 10 days following intravenous inoculation with 0.2 mL of a 1:10 dilution of a bacteria-free, infectious allantoic fluid or inoculation of 10 susceptible 4- to 8-week-old chickens resulting in an intravenous pathogenicity index (IVPI) of greater than 1.2;

(2) Any H5 or H7 virus that does not meet the criteria in paragraph (1) of this definition, but has an amino acid sequence at the haemagglutinin cleavage site that is compatible with highly pathogenic avian influenza viruses; or

(3) Any influenza virus that is not an H5 or H7 subtype and that kills one to five out of eight inoculated chickens and grows in cell culture in the absence of trypsin within 10 days.

\* \* \* \* \*

Quarantine facility. A USDA facility, or a private facility approved by APHIS, for the secure housing of imported birds, poultry, or other animals for specified periods.

\* \* \* \* \*

3. Section 93.101 is amended as follows:

- a. In paragraph (a), by revising the last sentence;
- b. In paragraph (c)(4)(i), by adding the word “highly pathogenic avian influenza,” before the words “Newcastle disease”;
- c. In paragraph (g)(2), by adding the words “highly pathogenic avian influenza and” before the words “Newcastle disease”;
- d. By revising footnote 7;
- e. In paragraph (g)(3), by adding the words “highly pathogenic avian influenza and” before the words “Newcastle disease” the first and second time they appear, and by adding the words “highly pathogenic avian influenza or” before the words “Newcastle disease” the third and fourth time they appear; and
- f. In paragraph (g)(4), by adding the words “highly pathogenic avian influenza and” before the words “Newcastle disease”.

The revisions read as follows:

§ 93.101 General prohibitions; exceptions.

(a) \* \* \* Unless otherwise indicated in the regulations, no live birds, and no hatching eggs from birds, shall be imported into the United States if the birds have originated from a region referenced in § 94.6(a) of this subchapter where highly pathogenic avian influenza or Newcastle disease is known to exist in commercial poultry populations, have transited highly pathogenic avian influenza- or Newcastle disease-affected regions, or have been vaccinated for the H5 or H7 subtype of avian influenza.

\* \* \* \* \*

<sup>7</sup> Such tests are conducted according to protocols for highly pathogenic avian influenza and Newcastle disease which are available upon request from the Administrator.

4. Section 93.104 is amended as follows:

a. In paragraphs (b)(2) and (b)(3), by adding the words “highly pathogenic avian influenza,” before the word “chlamydiosis”;

b. By revising paragraph (b)(4);

c. In paragraph (b)(5), by adding the words “highly pathogenic avian influenza or” before the words “Newcastle disease”;

d. In paragraph (b)(6), by adding the words “originated from or” before the words “been moved through a region identified in accordance with § 94.6(a) of this subchapter as a region where highly pathogenic avian influenza exists;”;

e. In paragraph (b)(7), by removing the words “previously unused containers” and adding the words “new or appropriately sanitized packaging materials” in their place;

f. In paragraphs (c)(3) and (c)(4), by adding the words “highly pathogenic avian influenza,” before the word “chlamydiosis”;

g. In paragraph (c)(6), by adding the words “highly pathogenic avian influenza or” before the words “Newcastle disease”;

h. In paragraph (c)(7), by adding the words “originated from or” before the words “been moved through a region identified in accordance with § 94.6(a) of this subchapter as a region where highly pathogenic avian influenza exists;”;

i. In paragraph (c)(11), by removing the words “previously unused containers” and adding the words “new or appropriately sanitized packaging materials” in their place;

j. In paragraphs (d)(3) and (d)(4), by adding the words “highly pathogenic avian influenza,” before the word “chlamydiosis”;

k. In paragraph (d)(5), by adding the words “highly pathogenic avian influenza or” before the words “Newcastle disease”; and

l. In paragraph (d)(7), by removing the words “previously unused containers” and adding the words “new or appropriately sanitized packaging materials” in their place.

The revision reads as follows:

§ 93.104 Certificate for pet birds, commercial birds, zoological birds, and research birds.

\* \* \* \* \*

(b) \* \* \*

(4) That the birds have not been vaccinated with a vaccine for the H5 or H7 subtype of avian influenza; however, zoological birds that have been vaccinated for avian influenza subtypes H5 or H7 as part of an official program, using vaccine products approved and used under supervision by the veterinary authorities of the exporting country, may be imported under specific conditions as determined by the Administrator and specified in an import permit. Such birds must be exported with permanent individual identification and meet the other requirements for entry under this part, and will be subject to official testing and quarantine on arrival to the United States.

\* \* \* \* \*

5. Section 93.106 is amended as follows:

a. In paragraph (b)(3), by adding the words “highly pathogenic avian influenza and” before the words “Newcastle disease”;

b. In paragraph (c)(3)(ii)(E), by revising the last sentence;

c. In paragraphs (c)(5)(iii)(A)(14) and (c)(5)(iii)(A)(17), by adding the words “highly pathogenic avian influenza or” before the words “Newcastle disease”; and

d. In paragraphs (c)(5)(iii)(B)(4) and (c)(5)(iii)(B)(5), by adding the words “highly pathogenic avian influenza or” before the words “Newcastle disease”.

The revision reads as follows:

§ 93.106 Quarantine requirements.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(E) \* \* \* If Newcastle disease or highly pathogenic avian influenza is found or detected among any birds in quarantine, all birds in the facility shall be destroyed or refused entry and the entire facility shall be thoroughly cleaned and then disinfected as directed under the supervision of an inspector.

\* \* \* \* \*

6. Section 93.200 is amended by adding, in alphabetical order, definitions of commercial poultry, highly pathogenic avian influenza (HPAI), and quarantine facility to read as follows:

§ 93.200 Definitions.

\* \* \* \* \*

Commercial poultry. Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys (including eggs for hatching) which are imported for resale, breeding, public display, or any other commercial purpose.

\* \* \* \* \*

Highly pathogenic avian influenza (HPAI). Highly pathogenic avian influenza is defined as follows:

(1) Any influenza virus that kills at least 75 percent of eight 4- to 6-week-old susceptible chickens within 10 days following intravenous inoculation with 0.2 mL of a 1:10 dilution of a bacteria-free, infectious allantoic fluid or inoculation of 10 susceptible 4- to 8-week-old chickens resulting in an intravenous pathogenicity index (IVPI) of greater than 1.2;

(2) Any H5 or H7 virus that does not meet the criteria in paragraph (1) of this definition, but has an amino acid sequence at the haemagglutinin cleavage site that is compatible with highly pathogenic avian influenza viruses; or

(3) Any influenza virus that is not an H5 or H7 subtype and that kills one to five out of eight inoculated chickens and grows in cell culture in the absence of trypsin within 10 days.

\* \* \* \* \*

Quarantine facility. A USDA facility, or a private facility approved by APHIS, for the secure housing of imported birds, poultry, or other animals for specified periods.

\* \* \* \* \*

7. Section 93.201 is amended as follows:

a. In paragraph (a), by revising the last sentence of the paragraph; and

b. By adding paragraph (e).

The revision and addition read as follows:

§ 93.201 General prohibitions; exceptions.

(a) \* \* \* \* \* Unless otherwise indicated in the regulations, no live poultry, and no hatching eggs from poultry, shall be imported into the United States if the poultry have originated from a region referenced in § 94.6(a) of this subchapter where highly pathogenic

avian influenza or Newcastle disease is known to exist in commercial poultry populations, have transited highly pathogenic avian influenza- or Newcastle disease-affected regions, or have been vaccinated for the H5 or H7 subtype of avian influenza.

\* \* \* \* \*

(e) Pigeons, doves, and other Columbiform species that have originated from or transited regions where highly pathogenic avian influenza is considered to exist may be imported into the United States under permit and controlled conditions to approved establishments subject to all applicable requirements in this part.

\* \* \* \* \*

8. Paragraphs (a) and (b) of § 93.205 are revised to read as follows:

§ 93.205 Certificate for live poultry and hatching eggs.

(a) Live poultry. (1) All live poultry, except eggs for hatching, offered for importation from any region of the world shall be accompanied by a certificate stating that such poultry and their flock or flocks of origin were inspected on the premises of origin immediately before the date of movement from such region and that they were then found to be free of evidence of communicable diseases of poultry. The certificate shall also state that, as far as it has been possible to determine, during the 90 days prior to movement, the poultry were not exposed to communicable diseases of poultry and the premises were not in any area under quarantine. The certificate shall also state that the poultry have not been vaccinated with a vaccine for the H5 or H7 subtype of avian influenza. The certificate shall also state that the poultry have been kept in the region from which they are offered for importation since they were hatched, or for at least 90 days immediately preceding the date of movement, that the poultry have not originated from or have been moved through a region referenced in § 94.6(a) of this subchapter as a region where

any form of highly pathogenic influenza exists, and that, as far as it has been possible to determine, no case of highly pathogenic avian influenza or Newcastle disease occurred on the premises where such poultry were kept, or on adjoining premises, during that 90-day period. The certificate must also state that the birds were placed into new or appropriately sanitized packaging materials at the premises from which the birds were to be exported.

(2) Live poultry certificates accompanying pigeons, doves, and other Columbiform species that have originated from or been moved through regions where highly pathogenic avian influenza is considered to exist must additionally state that the Columbiform species have been moved and handled under conditions specified on the import permit ensuring that their movement and handling involved no direct or indirect exposure to other animals, birds, and poultry.

(b) Hatching eggs. All eggs for hatching offered for importation from any part of the world shall be accompanied by a certificate stating that the flock or flocks of origin were found upon inspection to be free from evidence of communicable diseases of poultry, the hatching eggs are from poultry that have not been vaccinated with a vaccine for the H5 or H7 subtype of avian influenza, that during the 90 days prior to movement, the flock or flocks of origin were not exposed to communicable diseases of poultry and the premises were not in any area under quarantine, and that the hatching eggs and the flock or flocks of origin have not originated in or been moved through a region referenced in accordance with § 94.6(a) of this subchapter as a region where any form of highly pathogenic avian influenza exists. The certificate must also state that the hatching eggs were placed into new or appropriately sanitized packaging materials at the premises from which the hatching eggs were to be exported.

\* \* \* \* \*

PART 94–RINDERPEST, FOOT-AND-MOUTH DISEASE, NEWCASTLE DISEASE, HIGHLY PATHOGENIC AVIAN INFLUENZA, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS.

9. The authority citation for part 94 continues 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.

10. Section 94.0 is amended as follows:

a. By adding, in alphabetical order, definitions of approved establishment, commercial birds, and commercial poultry; and

b. By revising the definition of highly pathogenic avian influenza.

The additions and revision read as follows:

§ 94.0 Definitions.

\* \* \* \* \*

Approved establishment means an establishment authorized by Veterinary Services for the receipt and handling of restricted imported animal carcasses, products, and byproducts.

\* \* \* \* \*

Commercial birds. Birds that are imported for resale, breeding, public display, or any other purpose, except pet birds, zoological birds, research birds, or performing or theatrical birds.

Commercial poultry. Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys (including eggs for hatching) which are imported for resale, breeding, public display, or any other commercial purpose.

\* \* \* \* \*

Highly pathogenic avian influenza (HPAI). Highly pathogenic avian influenza is defined as follows:

(1) Any influenza virus that kills at least 75 percent of eight 4- to 6-week-old susceptible chickens within 10 days following intravenous inoculation with 0.2 mL of a 1:10 dilution of a bacteria-free, infectious allantoic fluid or inoculation of 10 susceptible 4- to 8-week-old chickens resulting in an intravenous pathogenicity index (IVPI) of greater than 1.2;

(2) Any H5 or H7 virus that does not meet the criteria in paragraph (1) of this definition, but has an amino acid sequence at the haemagglutinin cleavage site that is compatible with highly pathogenic avian influenza viruses; or

(3) Any influenza virus that is not an H5 or H7 subtype and that kills one to five out of eight inoculated chickens and grows in cell culture in the absence of trypsin within 10 days.

\* \* \* \* \*

11. Section 94.6 is amended as follows:

a. By revising paragraph (a)(1)(i);

b. In paragraph (a)(1)(ii), in the first sentence, by adding the word “referenced” after the word “list”;

c. In paragraph (b)(2), by adding the words “from regions where Newcastle disease or HPAI are considered to exist” after the words “and other birds”;

d. In the heading and introductory text of paragraph (c), by adding the words “or HPAI” after the words “Newcastle disease” each time they occur;

e. In paragraphs (c)(1)(ix) introductory text, (c)(1)(ix)(A), and (c)(1)(ix)(B), by adding the words “or HPAI” after the words “Newcastle disease” each time they occur;

f. In paragraph (c)(1)(ix)(C), in the first sentence, by adding the words “region free of HPAI, or from a” before the words “flock of origin”;

g. In paragraph (c)(2), by adding the words “and HPAI” after the words “Newcastle disease”;

h. In paragraph (c)(3), by adding the words “and HPAI” after the words “Newcastle disease” each time they occur, and by removing the words “paragraph (f)” and adding the words “paragraph (d)” in their place; and

i. In paragraph (c)(4), by removing the words “paragraph (f)” and adding the words “paragraph (d)” in their place.

The revision reads as follows:

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

(a) \* \* \*

(1) \* \* \*

(i) A list of such regions is maintained on the APHIS National Import Export Services Web site at [http://www.aphis.usda.gov/import\\_export/animals/animal\\_disease\\_status.shtml](http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml). Copies of the list will also be available upon request to Regional Evaluation Services, National Import Export Services, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737; fax: (301) 851-3300; e-mail:

AskNCIE.Products@aphis.usda.gov.

\* \* \* \* \*

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

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

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

13. Section 95.1 is amended by adding, in alphabetical order, the definition of highly pathogenic avian influenza (HPAI) to read as follows:

§ 95.1 Definitions.

\* \* \* \* \*

Highly pathogenic avian influenza (HPAI). Highly pathogenic avian influenza is defined as follows:

(1) Any influenza virus that kills at least 75 percent of eight 4- to 6-week-old susceptible chickens within 10 days following intravenous inoculation with 0.2 mL of a 1:10 dilution of a bacteria-free, infectious allantoic fluid or inoculation of 10 susceptible 4- to 8-week-old chickens resulting in an intravenous pathogenicity index (IVPI) of greater than 1.2;

(2) Any H5 or H7 virus that does not meet the criteria in paragraph (1) of this definition, but has an amino acid sequence at the haemagglutinin cleavage site that is compatible with highly pathogenic avian influenza viruses; or

(3) Any influenza virus that is not an H5 or H7 subtype and that kills one to five out of eight inoculated chickens and grows in cell culture in the absence of trypsin within 10 days.

\* \* \* \* \*

§ 95.3 [Amended]

14. Section 95.3 is amended by adding the words “highly pathogenic avian influenza, Newcastle disease,” after the words “foot-and-mouth disease,”.

§ 95.16 [Amended]

15. Section 95.16 is amended as follows:

a. In the introductory text, by removing the citation “§ 95.6” and adding the citation “§ 95.17” in its place; and

b. In footnote 1, by removing the citation “§ 95.41” and adding the citation “§ 95.17” in its place.

§ 95.17 [Amended]

16. In § 95.17, paragraph (c) is amended by adding the word “highly pathogenic avian influenza,” after the words “African swine fever,”.

§ 95.23 [Amended]

17. In § 95.23, paragraph (c) is amended by removing the word “and” after the words “foot-and-mouth disease,” and by adding the words “highly pathogenic avian influenza, and Newcastle disease,” after the word “rinderpest,”.

§ 95.41 [Removed]

18. Section 95.41 is removed.

Done in Washington, DC, this 25th day of November 2014 .

Jere L. Dick

Associate Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014-28244 Filed 11/28/2014 at 8:45 am; Publication Date: 12/01/2014]