



BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 50, 51, 52, 52, 54, 55, and 56

[Docket No. APHIS-2021-0010]

RIN 0579-AE65

Animal and Plant Health Inspection Service Indemnity Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: We are soliciting public comment on a new approach to indemnity value determination and a new framework for the indemnity regulations. These parts address payment of indemnity for the destruction and disposition of animals the Animal and Plant Health Inspection Service (APHIS) classifies as infected with, suspect of, or exposed to diseases of concern, to eradicate and control foreign animal diseases, emerging diseases, and program diseases. The current regulations for valuing animals for the purpose of indemnification vary from species to species and, in some cases, disease to disease within a species. The new approach would harmonize how APHIS determines animal values and deals with costs associated with transportation, cleaning, disposal, and other points at which variations occur in how APHIS manages indemnity and compensation.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

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

- Federal eRulemaking Portal: Go to www.regulations.gov. Enter APHIS-2021-0010 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2021-0010, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at Regulations.gov or in our reading room, which is located in room 1620 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) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Carter, Commodity Policy Advisor, Strategy and Policy, Veterinary Services, 4700 River Road, Riverdale MD 20737; Phone: (301) 851-3510.

SUPPLEMENTARY INFORMATION:

Background

The Animal Health Protection Act (7 U.S.C. 8301-8317) gives authority to the Secretary of Agriculture to hold, seize, quarantine, treat, destroy, dispose of, or take other remedial action as needed to prevent the introduction and spread of livestock pests and diseases within the United States. The Act also directs the Secretary to compensate the owner of any animal, article, facility, or means of conveyance that the Secretary requires to be destroyed. This compensation includes the payment of indemnity, which is monetary payment made to a livestock owner for animals and animal products taken or destroyed to control or eradicate a disease. These authorities have been delegated to the Animal and Plant Health Inspection Service (APHIS).

The current regulations for valuing animals for the purpose of compensation, known as the indemnity regulations, vary from species to species and, in some cases, disease to disease

within a species. The methods disease programs use range from specifying outdated flat rates to requiring in-person appraisal, with in-person appraisal being the most common method specified in the regulations.

In-person appraisal presents some significant difficulties. It works best for isolated incidents of slow-moving diseases of livestock. However, when APHIS encounters a widespread and fast-moving outbreak, such as occurred in 2014-2015 and again in 2022 with highly pathogenic avian influenza (HPAI), the rapid transmission of the disease can overwhelm the ability to provide timely and complete appraisal of fair market value using in-person appraisers. Additionally, third-party appraisal requires significant safeguards to ensure transparent and equitable appraisal, such as APHIS training of appraisers and robust review of records submitted by appraisers, and APHIS' resources to provide such safeguards have become increasingly limited over the years.

We are soliciting comments on an approach, discussed below, to restructure the indemnity regulations in 9 CFR parts 50 through 56 (referred to below as the regulations). The regulations currently provide for the payment of indemnity to owners of certain animals destroyed because APHIS classifies them as infected by, suspect of, or exposed to diseases of concern, for the purpose of eradicating and controlling foreign animal diseases, emerging diseases, and program diseases.

Part 50 provides conditions for the payment of indemnity for animals destroyed because of tuberculosis; part 51 for animals destroyed because of brucellosis; and part 52 for swine destroyed because of pseudorabies. Part 53 provides conditions for the payment of indemnity for animals destroyed because of foreign animal diseases, such as foot-and-mouth disease, contagious pleuropneumonia, Newcastle disease, HPAI, infectious salmon anemia, spring viremia of carp, as well as any other communicable disease of livestock or poultry that the Secretary decides constitutes an emergency and threatens the livestock or poultry of the United States. Part 54 contains our regulations governing indemnification for scrapie in sheep and

goats, while part 55 contains our regulations governing indemnification for chronic wasting disease in captive cervids. Finally, part 56 contains our regulations governing indemnification for poultry destroyed because of H5/H7 low pathogenic avian influenza.

Within the regulations, many of the processes used for requesting and obtaining indemnity are similar from part to part, despite the disease agent and species in question differing among the parts. For example, the parts generally require requests for indemnity to be presented on forms furnished by APHIS,¹ and they require the claimant to report any salvage derived from the sale of the animals, any indemnity already paid for the animals by parties other than APHIS, and any existing mortgage against the animals.

However, while the processes for qualifying for and obtaining indemnity are often similar, the processes within the regulations for valuing animals for the purpose of indemnification vary from species to species and, in some cases, disease to disease within a species. For example, whereas the regulations governing indemnification for cattle that are destroyed because of exposure to brucellosis allow for either a flat rate indemnification or appraisal of fair market value, the regulations governing indemnification of cattle destroyed because of exposure to tuberculosis require appraisal of fair market value. Additionally, while the regulations governing indemnification of cattle destroyed because of exposure to tuberculosis specify that the appraiser of fair market value must be selected by APHIS, the regulations governing indemnification of cattle destroyed because of exposure to brucellosis contain no such specification.

At this time, we are considering two structural changes to the indemnity regulations. First, we are considering standardizing use of an annual indemnity value table for livestock species. APHIS is also contemplating a framework to consolidate all commodity indemnity

¹ The paperwork and recordkeeping activities described in this document are included under the following OMB control numbers: 0579-0007, 0579-0047, 0579-0065, 0579-0101, 0579-0146, 0579-0189, 0579-0192, and 0579-0195.

regulations under a single unified section in part 50. Parts 51 through 56 would be removed, and the numbers reserved.

Indemnity Value Table

APHIS is considering standardizing use of an annual indemnity value table for livestock² species, with allowances for appraisal only when an indemnity value cannot be calculated using the tables, or when a producer elects to appeal the indemnity value based on extraordinary circumstances surrounding the livestock or poultry at issue. The table, found at https://www.aphis.usda.gov/animal_health/downloads/usda-commercial-values-2022.pdf, includes explanation of methods of calculation and sources. APHIS currently maintains such a table. However, because its use is not specified within the regulations, its use is not standardized.

In standardized use of an indemnity value table, the regulations we are considering would state that APHIS would determine indemnification values annually and publish the values online. Notification of the revised values would be provided through a notice published in the *Federal Register*. With this standardization, APHIS would also provide indemnity values by animal classes similar to the Farm Service Agency's (FSA) Livestock Indemnity Program.³ Categories will include animal classes such as non-adult (400-799 pounds) beef steers, sire rams of breeding age, and ducks 12 months of age or older. APHIS will work with other U.S. Department of Agriculture (USDA) agencies to develop common methods for determining animal classes and values for the standardized table.

A standardized approach would eliminate the different indemnity values used in different disease programs for the same species, such as in the example above regarding the discrepancy

² Please note that the Animal Health Protection Act, pursuant to which authority this document is being issued, defines livestock as: "All farm-raised animals." This includes bees, farmed aquaculture, poultry, and animals maintained in captivity on a farm.

³ The FSA Livestock Indemnity Program regulations are found at 7 CFR 1416.301 through 1416.306. Further information about the program is found at: https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/livestock_indemnity_program_lip-fact_sheet.pdf.

between indemnification for brucellosis in cattle and indemnification for tuberculosis in cattle. It would also resolve several known operational challenges with indemnification based on fair market appraisal by an appraiser. The first operational challenge is that appraisal of fair market value by an appraiser works best for isolated incidents of significant, but slow-moving, diseases of livestock and poultry. When a widespread and quickly moving outbreak occurs, such as the 2014-2015 outbreak of HPAI in which 7.4 million turkeys and 43 million egg-layers/pullet chickens were determined to be affected with HPAI, the rapid transmission of the disease can overwhelm the ability to provide timely and complete appraisal of fair market value using in-person appraisers. The second operational challenge is that a regulatory framework that is based primarily on third-party appraisal requires significant safeguards to ensure consistent and transparent appraisal, such as APHIS training of the appraisers and establishing mechanisms for thorough review of the appraisal records submitted to APHIS. APHIS' resources to provide such training and review of such records have become extremely limited.

APHIS seeks public comment on this approach, with a specific focus on how this approach may affect members of the public, as well as how any alternative suggestions may improve the indemnity regulations.

Consolidation of Indemnity Regulations

APHIS is also contemplating a framework to consolidate all commodity indemnity regulations under a single unified section in part 50. Parts 51 through 56 would be removed, and the numbers reserved.

As noted above, many of the sections within parts 51 through 56 contain substantially similar regulatory provisions regarding the process for requesting and obtaining indemnity, and they could be consolidated into a single part with minor changes to verbiage and no changes to operational practices. The consolidated part would, however, harmonize how APHIS addresses value determination, compensation for cleaning and disposal, and other instances in which variations occur within the current parts.

While APHIS believes a single harmonized part would effectively address most indemnification cases, we are seeking input on whether there are any species, commodity classes or intended uses within a species, or other considerations that would merit their own part. We are also seeking input on any sections where the disease management approach could be significantly altered by such consolidation of the indemnification process.

Below, we discuss section by section our current thinking regarding a consolidated part 50.

Definitions

This section would define livestock classes, diseases, and disease status important for the interpretation of the regulations. We anticipate that the definitions would generally be drawn from and consistent with the definitions currently in the regulations. We invite comment on whether any of the current definitions should be revised. We also invite comment on whether any definitions should be added to those currently in the regulations.

Applicability

This section would list the species and diseases that fall under these regulations. Diseases would be reorganized and split into two different categories for which APHIS may provide indemnity: (1) Foreign animal diseases and emerging diseases; and (2) domestic program diseases.

For the former category, APHIS would maintain a list online of the foreign animal diseases and emerging diseases for which we may pay indemnity. APHIS would publish changes to the list in a notice in the *Federal Register* and state the basis for the change. As a baseline, this list would contain the diseases currently listed in part 53 of the regulations (Foot-and-mouth disease, contagious pleuropneumonia, Newcastle disease, HPAI, infectious salmon anemia, and spring viremia of carp), as well as classical bovine spongiform encephalopathy. The regulations would continue to recognize the potential for other communicable diseases of

livestock or poultry that the Secretary decides constitute an emergency and threaten the livestock or poultry of the United States.

In addition to the foreign animal diseases and emerging diseases listed above, APHIS would group together the following domestic diseases:

- Cattle and Bison: Bovine tuberculosis, bovine brucellosis.
- Captive Cervids: Bovine tuberculosis, bovine brucellosis, and chronic wasting disease.
- Goats: Scrapie, bovine tuberculosis, and brucellosis.
- Sheep: Scrapie, bovine tuberculosis, brucellosis.
- Swine: Pseudorabies, brucellosis, and bovine tuberculosis when associated with bovine tuberculosis cattle herds.
- Poultry: H5/L7 low pathogenic avian influenza.

Testing and Records of Tests

This section would discuss requirements for test records that document eligibility for indemnity for the animals. Parts 50 and 51 currently contain such requirements, and they are very similar to each other. At this time, we are not considering substantial changes from the language already in the regulations. However, we invite public comment on any challenges that may have arisen with the current requirements and how they might be addressed.

Payments to Owners

This section would provide for the possibility of compensation to owners for costs other than the destruction of the animals, and, if so, what costs APHIS could compensate. It would also set forth requirements for forms required by APHIS regarding the compensation for animals, the cost of disposition of covered animals, the cost of material destroyed, and the expenses associated with destruction. This section would consolidate existing language from the current regulations; we are not considering substantial changes to the current practice. However, we again invite public comment on any challenges that may have arisen with the current requirements and how they might be addressed.

Claims Not Allowed

This section would provide additional conditions for certain disease agents that affect whether indemnity can be claimed. Again, we are not currently considering substantial changes from the requirements currently in the regulations but invite public comment on challenges associated with the current requirements and how they may be addressed.

Identification

This section would describe the identification requirements of the animals that qualify for indemnification and the timeline for such identifications. For those disease programs that do not have identification requirements, we would refer to the requirements in 9 CFR part 86 (the Animal Disease Traceability regulations) for official identification. We are also considering removing reactor and suspect branding and reactor tags as forms of reactor and suspect identification for animals that qualify for indemnification for brucellosis because APHIS no longer uses such identification within the domestic brucellosis eradication program.

Determination of Indemnity

APHIS is considering substantial changes to this section. With the consolidation of parts 50 to 56, APHIS is proposing to standardize how animals are valued for all commodities regardless of disease program. As noted above, APHIS is considering generally harmonizing its approach to animal valuation with that of FSA. The tables produced by APHIS and FSA would use the same calculations and data sets for the value determination. APHIS would update the indemnity values for APHIS program use annually and post them to the APHIS website. These values would be determined by the meat, egg production, and dairy or breeding value of the animals using publicly verifiable data sources. Animals would be valued in categories by species and type. APHIS has created a 2022 indemnity values document for commercial production animal classes, and it can be viewed on the APHIS website at https://www.aphis.usda.gov/animal_health/downloads/usda-commercial-values-2022.pdf. This document describes in detail how the values for each class of animal would be determined.

When APHIS needs to indemnify a species or class of animal that is not listed in the tables (e.g., if an emerging disease were to impact a species of livestock for which indemnity is currently not provided, or if indemnity were sought for organic animals or animals subject to value-added production practices), APHIS would determine whether there is sufficient representative data from industry sources and professional appraisal groups to determine a national value for the species or class of animal. If there is such a national value, APHIS would amend the table to add the new category and issue a notice in the *Federal Register* announcing the new values. If APHIS cannot identify a national value based on available data, APHIS would require appraisal by an APHIS-approved appraiser. This could be an appraiser APHIS selects, or alternatively, an appraiser the owner of the animals selects and pays, and whom APHIS determines to meet certain professional standards and not to be in a material conflict of interest in appraising the animals.

An owner could appeal the indemnity value set forth in a table or the appraised value provided by an appraiser selected by APHIS. To do so, the owner would have to secure an alternate appraisal by an appraiser he or she selects and pays for at his or her own expense. APHIS would require that the appraiser meet certain professional standards and not to be in a material conflict of interest regarding appraising the animals. During an incident requiring remediation, costs incurred are the producer's responsibility up to the point the necessary indemnity paperwork is signed.

In addition to general comments about the suitability of this approach, APHIS requests comment on whether there are any species or classes not covered either by FSA's tables or APHIS' own tables for which APHIS should develop a value for indemnification and any recommended data sources available for determining national values for these classes.

Cap on Values Paid by APHIS

Currently, APHIS has a cap on several animal commodities, such as \$3000 for individual cattle under the Tuberculosis Eradication Program. However, APHIS is considering removing

these since the annual table value would be the amount APHIS would indemnify under most circumstances. We invite comment on whether, if APHIS cannot calculate a table value for the animals, caps should be in place and at what values APHIS should set those caps.

Mortgages

As noted above, the regulations generally require owners to indicate whether the animals for which indemnification is being requested are subject to any mortgage. We are not currently considering substantial changes from the requirements currently in the regulations but invite public comment on challenges associated with the current requirements and how they may be addressed.

Joint Ownership/Contract Raisers

The regulations in part 56 provide for payment of indemnity or compensation to both poultry owners and contractors who raise poultry for others. We are considering whether to expand this to other commodities as well since more commodity groups are using contract raisers. We are seeking information about how other industries use contractors and how indemnification and compensation might work in those industries.

Salvage Values

There are times that the meat from indemnified animals can be salvaged during disease eradication efforts. This is part of industry's contribution to the indemnification process. This section would describe how the amount APHIS pays a producer is modified when value from the animals can be salvaged. This section is not expected to change significantly from the current regulations, but we invite public comment on challenges associated with the current regulations and how they may be addressed.

Destruction and Disposal

Language in this section would largely remain the same with some harmonization between the disease programs. For the most part, language would be similar to that which is used for herd depopulations. APHIS is also considering harmonizing what material qualifies for

destruction under this section. For example, if APHIS determines that material such as feed from premises affected by a foreign animal disease needs to be destroyed, APHIS would, in most cases, indemnify it. For program diseases, APHIS will need to make this determination for a regulated disease on the basis of the disease itself and the likelihood of further transmission if the feed or other material is later used.

Cleaning and Disinfection of Premises, Conveyances, and Materials

APHIS is considering harmonizing the language across all commodities as to what cleaning costs are covered when APHIS requires cleaning and disinfection prior to repopulating a facility. APHIS currently will cover cleaning and disinfection costs after removing animals for foreign animal diseases, but not for program diseases. Harmonizing across all diseases will likely increase APHIS' costs and potentially lower the available funds for indemnifying animals. Again, we are inviting public comment on challenges associated with the current requirements and whether greater harmonization is needed.

Pre-exposure Biosecurity Requirements for Herds/Flocks

Currently, in order for a producer or owner to receive indemnity for poultry destroyed because of avian influenza, the producer must meet pre-exposure biosecurity requirements. There are similar requirements for farmed aquaculture with respect to infectious salmon anemia. APHIS is considering expanding this approach to other commodity groups. APHIS is seeking input as to whether similar approaches can be put in place for other animal commodities and what would constitute basic biosecurity protocols as minimum standards. APHIS is also interested in the issues and impact this would have on producers for each of the commodities if these requirements are included as a condition of indemnification.

Post-exposure Biosecurity Requirements

Post-exposure biosecurity requirements are already built into the various disease programs. In most cases, these are in effect as an affected herd or flock plan that the producer must adhere to as a condition for future indemnification. APHIS would like to harmonize the

requirements within animal commodity groups to the extent possible, and APHIS seeks public comment on ways by which we might do this.

Environmental Impacts

APHIS seeks public comment on how the above framework may implicate the “human environment,” as this phrase is understood within the context of the National Environmental Policy Act (NEPA). Comments will help inform APHIS as to the applicability of NEPA to modifications to the indemnity regulations.

Economic Considerations

APHIS seeks public comment on economic cost considerations associated with the above framework. Particularly, we are interested in receiving comment as to whether there are any instances in which the proposed approach to calculating indemnity could result in substantial economic impacts for producers relative to the current regulations, as well as instances in which the consolidation and harmonization identified above could result in costs or benefits for affected parties.

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

Done in Washington, DC, this 31st day of August 2022.

Jennifer Moffitt,

Undersecretary, United States Department of Agriculture.

[FR Doc. 2022-19260 Filed: 9/6/2022 8:45 am; Publication Date: 9/7/2022]