spores or bunted kernels of *Tilletia indica* must be cleaned and disinfected in accordance with § 301.89–13 prior to being used in the conditioning of seed that has tested negative for the spores of *Tilletia indica* or to being moved from a regulated area.

(c) Any grain storage facility, including on-farm storage, that is used to store seed that has tested bunted-kernel or spore positive or grain that has tested bunted-kernel positive must be cleaned and, if disinfection is determined to be necessary by an inspector, disinfected in accordance with § 301.89–13 if the facility will be used to store grain or seed in the future.

(d) Conveyances used to move bunted-kernel-positive host crops, including trucks, railroad cars, and other containers, that have sloping metal sides leading directly to a bottom door or slide chute, are self cleaning and will not be required to be cleaned and disinfected.

(e) Spore-positive wheat, durum wheat, or triticale seed that has been treated with any chemical that renders it unfit for human or animal consumption must be disposed of by means of burial under a minimum of 24 inches of soil in a non-agricultural area that will not be cultivated or in an approved landfill.

10. Section 301.89–13 would be revised to read as follows:

§ 301.89–13 Treatments.

All conveyances, mechanized harvesting equipment, seed conditioning equipment, grain elevators, and structures used for storing and handling wheat, durum wheat, or triticale required to be cleaned under this subpart must be cleaned by removing all soil and plant debris. If disinfection is required by an inspector in addition to cleaning, the articles must be disinfected by one of the methods specified in paragraph (a), (b), or (c) of this section, unless a particular treatment is designated by an inspector. The treatment used must be that specified by an inspector:

(a) Wetting all surfaces to the point of runoff with one of the following 1.5 percent sodium hypochlorite solutions and letting stand for 15 minutes, then thoroughly washing down all surfaces after 15 minutes to minimize corrosion:

(1) One part Ultra Clorox brand regular bleach (6 percent sodium hypochlorite; EPA Reg. No. 5813–50) in 3 parts water; or

(2) One part CPPC Ultra Bleach 2 (6.15 percent sodium hypochlorite; EPA Reg. No. 67619–8) in 3.1 parts water.

(b) Applying steam to all surfaces until the point of runoff, and so that a critical temperature of 170 °F is reached at the point of contact.

(c) Cleaning with a solution of hot water and detergent, applied under pressure of at least 30 pounds per square inch, at a minimum temperature of 170 °F.

§ 301.89–14 [Removed and Reserved]

11. Section 301.89–14 would be removed and reserved.

Done in Washington, DC, this 1st day of July 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–17202 Filed 7–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 373

9 CFR Part 60

[Docket No. 02–062–1]

RIN 0579–AB50

Cost-Sharing for Animal and Plant Health Emergency Programs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing new regulations that would establish criteria to determine the Federal share of financial responsibility relative to States and other cooperators in an emergency in which an animal or plant pest or disease threatens the agricultural production of the United States. The increasing frequency of new pest and disease incursions, the variation in cost-sharing arrangements among past and present emergency programs, and constraints on Federal and State resources necessitate a more consistent and predictable approach to cost allocation among program participants. The cost-sharing arrangements provided in this proposed rule would apply to most emergency program activities, including the payment of compensation, that are authorized under the Plant Protection Act and the Animal Health Protection Act. This would include funding provided to respond to an emergency, as well as funding included in the annual budget request for ongoing actions previously funded through emergency authority. The intent of this proposal is to facilitate long-term resource planning and funding decisions by both the Federal Government and cooperators. Since infestations can have a national impact, as well as affect State and local governments, industry, and producers, and remedial actions will benefit all affected interests, there needs to be a way to determine the appropriate allocation of responsibility in combating these infestations. The purpose of this rulemaking is to describe the criteria that would be used to determine the appropriate levels of responsibility between the Federal Government and cooperators.

DATES: We will consider all comments that we receive on or before September 8, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–062–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–062–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–062–1'' on the subject line.

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

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Shea, Director, Policy and Program Development, APHIS, 4700 River Road, Unit 116, Riverdale, MD 20737–1237; (301) 734–5136.

SUPPLEMENTARY INFORMATION:

Background

Emergency Program Authorities and Operations

The Plant Protection Act (7 U.S.C. 7701–7772) and the Animal Health

Protection Act (7 U.S.C. 8301–8317) assign to the Federal Government responsibility to prevent the introduction, spread, and establishment of plant pests, noxious weeds, and pests and diseases of livestock in the United States.[1] These Acts authorize the Secretary of Agriculture (Secretary) to regulate animals and plants, their products, and other articles in foreign and interstate commerce; to hold, treat, and destroy such articles; and to cooperate with various entities, including State and local governments and industry groups (cooperators), to carry out programs to detect, control, and eradicate pests and diseases. These Acts also provide the Secretary additional regulatory and funding authority, including the payment of compensation, in cases of pest and disease emergencies.

The occurrence of pests or diseases that are either foreign to or not widely prevalent in the United States poses a serious threat to the health and economic viability of U.S. animal and plant resources. These outbreaks are generally easier and less costly to control and eradicate if action is taken immediately following detection. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) provides national leadership in implementing the Secretary's authorities, including emergency authorities, to detect, control, and eradicate invasive pests and diseases. APHIS frequently conducts these emergency programs in conjunction with affected States and other cooperators.

Emergency Program Costs; Recent Trends; Constraints on Federal Resources

The cost of activities carried out under emergency program authorities to detect, control, and eradicate pests and diseases generally has been shared by APHIS and the State(s). These cost-sharing arrangements may also include industries, organizations, and groups that benefit from or are affected by these animal and plant protection activities. The allocation of emergency program costs among APHIS and other cooperators has varied depending upon the particular pest or disease, as well as other factors, such as the location of the outbreak or occurrence. For example, cooperative programs for eradicating fruit flies have historically operated on an equal cost-sharing basis with the affected States. In the recent outbreak of plum pox virus, a new pest in the United States, the State of Pennsylvania assumed a significant portion of the financial obligation for the operational program within the State, while APHIS contributed to the financing of activities to guard against the spread of the pest to other stone fruit producing States. However, in the case of Asian longhorned beetle (ALB), APHIS has assumed most of the cost of the operational program.

A close examination of these programs reveals that cost allocations have been implicitly based on at least three factors: The size of the outbreak area, the area at risk beyond the initial outbreak, and the nature of the pest. APHIS' actions to eradicate the plum pox virus and ALB outbreaks were based on the technical feasibility in carrying out each action (presented by the small size of the initial outbreak areas) and the risk of spread to nonaffected areas in the absence of early and rapid response by the Federal Government. The Federal share of costs for both pest outbreaks has been greater than the cooperators' share as the resources at risk in the nonaffected areas were much larger than those in the affected areas. The nature of the pest is an additional factor taken into consideration in determining the Federal cost share level in an emergency program. As a proportion of the total cost, the Federal share of the plum pox control program is smaller than the Federal share of the ALB emergency program. This reflects the greater responsibility of the Federal Government in safeguarding public resources as the pest in the ALB case largely affects non-commercial, urban trees and forests.

In recent years, the number of infestations, as well as the average and total cost of eradication programs to the Federal Government have increased significantly, as the following Table 1 illustrates:

TABLE 1.—EMERGENCY FUNDING TRANSFERRED FROM THE COMMODITY CREDIT CORPORATION

	FY 1981–86	FY 1987–92	FY 1993–98	FY 1999–2003
Total funding ($ in millions)	41	66	136	1,234
Average annual funding ($ in millions)	7	11	23	264
No. of pest infestations	3	4	4	19
No. of times annual funding for an infestation was:				
$10 million or more	1	1	5	27
$25 million or more	0	1	0	14
$50 million or more	0	0	0	7

We believe that a better defined, more consistent approach to cost sharing and the allocation of financial responsibility among the Federal Government, State(s), and other cooperators would improve planning and funding decisions in emergency programs. In response to this need, and as explained in greater detail below, we are proposing that predetermined cost-sharing percentages apply to certain emergency program activities.

Emergency Program Activities Subject to Cost-Sharing

There are a number of activities conducted as part of an emergency program, beginning with the detection of the pest or disease, that we believe should be subject to a predetermined cost-sharing arrangement. These would include such activities as:

• Delimiting surveys and diagnostics.

• Control or eradication operations (*e.g.*, chemical, biological, and/or mechanical treatment regimens, including animal, plant, and product destruction and/or disposal).

• Research and methods development specific to outbreaks, if such activities are anticipated to rapidly contribute to the success of the control or eradication operations.

• Public information activities specific to outbreaks and designed to contribute to the success of the control or eradication operations.

[1] The Plant Protection Act and the Animal Health Protection Act give specific meaning to the terms ''plant pest'' and ''noxious weed,'' and ''pest'' and ''disease'' of ''livestock.'' In this Supplementary Information, we frequently use the term ''pests and diseases'' or ''pests or diseases'' to encompass the terms found in the Acts.

• The payment of compensation.

Allocating the financial responsibility among the Federal government, State(s), and other cooperators would depend on the nature of the pest or disease, the extent of areas affected by the pest or disease versus currently nonaffected, but potentially threatened areas, the amount of time that has elapsed since the commencement of the emergency program, and the ability of States and local cooperators to conduct and/or fund the activities, as discussed later.

We believe that the costs for enforcement of regulations on interstate and intrastate movements in conjunction with specific emergency programs should be allocated directly to APHIS and the States as appropriate. We recognize that in practice, however, these activities may be indistinguishable from one another, and that these activities could be subject to a predetermined cost-sharing arrangement on a case-by-case basis. We also recognize that compensation payments are sometimes used in conjunction with other emergency program activities (*e.g.*, to encourage expedited reporting of an infestation, thereby contributing to control or eradication of the pest or disease). As described in the following section, we invite comments on the inclusion of the cost of these payments in a predetermined cost-sharing arrangement.

Compensation

In some emergency programs, compensation payments are made to producers and other persons for the destruction of animals and materials affected by pest or disease, or for related cleaning and disinfection costs. Since the Federal Government and States often share the payment of these costs, our proposal to establish predetermined cost-sharing arrangements for emergency programs would also apply to compensation payments to producers and other affected persons. If the emergency program includes the payment of compensation, then the cost-sharing percentage would be applied either to the emergency program costs in total (including payments of compensation) or to the compensation and non-compensation components separately, at the discretion of the Secretary.

By applying the proposed cost-sharing criteria to the payment of compensation, this proposed rule, if implemented, could affect other APHIS regulations that cover the payment of compensation and other emergency program costs for specific animal and plant pests and diseases. The rule portion of this document does not specify what those potential changes would be. However, the final rule, if implemented, would include any necessary changes to other APHIS regulations.

Factors Affecting the Federal Share of Emergency Program Costs

We have identified certain factors that we believe should influence the relative levels of Federal and cooperator support in emergency program activities covered by our proposal.

Priority Pests and Diseases

Of particular concern are highly contagious, virulent diseases, such as foot-and-mouth disease, and other pests or diseases that can spread rapidly, and quickly affect production, markets, and/or the environment over a large area. Also of concern are pests or diseases that, while not contagious (or as contagious), affect human health with resulting effects on the marketing of agricultural products. Full, immediate, and sustained application of Federal resources generally is required to eliminate these pests and diseases or minimize their effects. Our proposed rule, as discussed below, would refer to these pests and diseases as ''priority pests and diseases.'' We believe that the following pests and diseases would likely fall into this category:

• Foot-and-mouth disease
• Hog cholera (classical swine fever)
• Highly pathogenic avian influenza
• Exotic Newcastle disease
• Rinderpest
• African swine fever
• Contagious bovine pleuropneumonia
• Lumpy skin disease
• Bovine spongiform encephalopathy
• Downy mildew of corn
• Wheat rust

The Extent of Affected Versus Nonaffected Areas

Pest and disease outbreaks usually (if inspection, monitoring, and surveillance programs are effective) begin at only one or a few loci. The Federal government has a statutory responsibility under the Plant Protection Act and the Animal Health Protection Act to protect susceptible animal, plant, and environmental resources that are free of the pest or disease by preventing its interstate spread and taking actions to eliminate the outbreak. When a pest or disease outbreak occurs, program specialists conduct assessments of its potential rate of spread and consequences. We believe that the Federal share of emergency program costs should be higher in situations where the areas or resources affected by the pest or disease occurrence are small, but the nonaffected areas or resources at risk are high. While there are innumerable such scenarios, we believe that the nonaffected areas or resources at risk in these situations should be at least 10 times greater than the affected areas or resources. Nonaffected areas or resources at risk would include those areas where the pest or disease could spread within 1 year in the absence of any action to control or eradicate the pest or disease. For larger outbreaks in which many States are affected (particularly States with commercial interests) and participating in the emergency program, the Federal share of program costs should be lower.

Timing of Emergency Program Operations—Financial Resources of Cooperators

Long-standing relationships between APHIS and State and industry cooperators usually enable an effective programmatic response to serious outbreaks. However, cooperator contributions are frequently in-kind or intangible, especially in the early stages of a program. States or other cooperators may lack financial resources of the magnitude required, or they may lack the capability to quickly access those resources.

In situations where the success of detection, control, or eradication operations is especially time sensitive and program objectives may be achieved in a relatively short period of time, leading to lower total program costs, we believe that the Federal government should be prepared to provide more financial support early in the program to ensure a timely and cost-effective response to a pest or disease occurrence. We also believe that even in emergency programs of longer anticipated duration, for reasons stated above, our cooperators may not be able to provide their full share during the program's early stages. In these situations, we would expect that cooperator contributions would increase after the emergency program has been in operation for several years.

As we have said, we believe that the Federal government has a responsibility to take leadership in rapidly responding to a pest or disease occurrence. We are committed to carrying out that responsibility. We also believe that States and other cooperators have and should continue to share in that responsibility. In that regard, it is our desire that our cooperators continue to develop the capacity, including funding, to be full participants in emergency programs.

We intend to continue to work with our cooperators to develop emergency response capabilities, including commitment and capacity for cost sharing. In recent years, APHIS has worked with States to develop Standards for State Animal Health Emergency Management Systems. These standards include a standard addressing the adequacy of funding mechanisms and the sufficiency of funding to meet animal health emergency needs. APHIS and the States should work toward achieving performance goals for the development of the standards and tie financial support of State involvement in a given program activity to meeting these goals. We intend to carry out similar efforts to help strengthen Federal and State plant health emergency management systems.

Cost-Sharing Percentages

We believe that, as a starting point, the Federal share of covered emergency program costs should be up to 50 percent. We believe that the following factors could cause an increase in this percentage:

- If higher Federal involvement in the early stages of an emergency program would lead to lower total program costs.
- If the areas or value of resources at risk (*e.g.*, nonaffected areas) are very large compared to the affected area.
- If a State or other cooperator lacks financial resources.
- If the emergency involves a priority pest or disease.

We also believe that if the pest or disease directly affects one or more State commercial interests within the affected area, then the Federal share would be slightly lower.

Duration of Programs

We propose that Federal funding would continue for no more than 10 years for new emergency programs or 5 years for programs already underway, unless the Secretary determines that Federal payments for a longer period are necessary. We would also provide that if the same pest or disease occurs in a location that is geographically separate from the original outbreak, or reoccurs in the area of the original outbreak following a prescribed time period after eradication is completed, as determined by a USDA scientific assessment, then it could be considered a new outbreak and subject to new cost-sharing and program duration requirements.

Proposed Rule

Based on the general principles just discussed, we are proposing regulations that would establish criteria to determine the Federal share of emergency program costs relative to States and other cooperators. The regulations would be in two new parts in the Code of Federal Regulations (CFR), one part in the plant-related provisions of title 7, chapter III, and one part in the animal-related provisions of title 9, chapter I, subchapter B.

The two new parts, ''Cost Sharing for Plant Health Emergency Programs'' to appear at 7 CFR part 373, and ''Cost Sharing for Animal Health Emergency Programs'' to appear at 9 CFR part 60, would be constructed similarly: Each would contain a section that provides definitions for specific terms used in the part; a section that authorizes the Administrator of APHIS, USDA (Administrator) to assign ''priority'' status to certain pests and diseases; a section that provides criteria for determining the Federal share of emergency program costs; a section on funding shortfalls and other funding adjustments among cooperating parties; a section on activities not subject to cost-sharing; and a section that clarifies the authority of the Secretary to implement agreements with respect to funding responsibilities of APHIS and other cooperators in carrying out an emergency program. These two parts are almost identical in structure and content except that 7 CFR part 373 would cover emergency program activities carried out under the authority of the Plant Protection Act, and 9 CFR part 60 would cover emergency program activities carried out under the authority of the Animal Health Protection Act.

Definitions

Both 7 CFR part 373 and 9 CFR part 60 would begin with a definition section, § 373.1 and § 60.1, respectively. The terms defined in each section would be the same: *Administrator, commencement of the emergency program, cooperator(s), emergency program, emergency program costs*, *Federal base percentage*, *OMB*, *Secretary*, and *State*.

Proposed §§ 373.1 and 60.1 would define *Administrator* as the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any person authorized to act for the Administrator.

In proposed §§ 373.1 and 60.1, the term *commencement of the emergency program* would refer to the date that the Secretary determines an emergency exists or the date that emergency funding is approved, whichever comes first.

In proposed § 373.1, a *cooperator(s)* would refer to a State or political subdivision of a State, a domestic organization or association, or other person who participates in an emergency program with the Federal government. To parallel the statutory language found in the Animal Health Protection Act, proposed § 60.1 would vary slightly from § 373.1 by also referring to Indian tribes.

In proposed § 373.1, an *emergency program* would refer to those activities carried out under the authority of the Plant Protection Act in connection with an emergency, including delimiting surveys; testing and related diagnostic activities; regulatory enforcement; chemical, biological, mechanical, and other detection, control, and eradication activities, including destruction and disposal of plants, plant products, and other articles; the payment of compensation; and research, methods development, and public information activities carried out specifically in connection with an emergency. The proposed definition of *emergency program* in § 60.1 would parallel the proposed definition of *emergency program* in § 373.1 except that § 60.1 would refer to the authority of the Animal Health Protection Act instead of the Plant Protection Act.

Proposed §§ 373.1 and 60.1 would define *emergency program costs* as financial, personnel, and other resources necessary to carry out an emergency program, without regard to the entity or individual that provides the resources or the manner in which they are provided.

Proposed §§ 373.1 would define *Federal base percentage* as the initial percentage share of emergency program costs the Secretary is authorized to pay in connection with an emergency involving a plant pest or noxious weed, while proposed § 60.1 would define the same term as the initial percentage share of emergency program costs the Secretary is authorized to pay in connection with an emergency involving a pest or disease of livestock.

In proposed §§ 373.1 and 60.1, *OMB* would refer to the Office of Management and Budget of the United States Government.

Proposed §§ 373.1 and 60.1 would define *State* as each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Finally, proposed §§ 373.1 and 60.1 would define *Secretary* as the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture authorized to act for the Secretary.

Priority Pests and Diseases

In proposed § 373.2, the Administrator would be authorized to designate certain plant pests and noxious weeds as priority plant pests and noxious weeds. In making such a determination, the Administrator would consider the degree of contagion and the human health and market effects of the plant pest or noxious weed and other relevant factors. The Administrator may notify the public from time to time, through publication of a list in the **Federal Register**, of the priority plant pests and noxious weeds. Proposed § 60.2 would contain a similar provision providing the Administrator with the authority to designate certain pests and diseases of livestock as priority pests and diseases of livestock. Assuming the final rule is implemented, we intend to publish a notice that would list those pests, noxious weeds, and diseases that we consider to be priority pests and diseases at the time of publication of the final rule.

Federal Share of Emergency Program Costs

Proposed §§ 373.3 and 60.3 would set forth criteria and cost-sharing percentages that would be used to determine the Federal share of emergency program costs. Both sections are almost identical in construction, other than referring to plant pests or noxious weeds (in the case of proposed § 373.3) or pests or diseases of livestock (in the case of proposed § 60.3).

Proposed § 373.3(a) would provide that, in connection with an emergency involving a plant pest or noxious weed and upon agreement of the States or political subdivisions of States, domestic organizations or associations, or other persons to participate in an emergency program, the Secretary would be authorized to pay, subject to the availability of funding, emergency program costs as provided under proposed § 373.3(b). Paragraph (a) of § 373.3 would also provide that such payments could be made for no more than 10 years (or, for emergency programs currently underway, for no more than 5 years after the effective date of the final rule), unless the Secretary determines that payments for a longer period are necessary. However, if the same pest or disease occurs in a location that is geographically separate from the original outbreak, or reoccurs in the area of the original outbreak following a prescribed time period after eradication is completed, as determined by a USDA scientific assessment, then it could be considered a new outbreak and subject to new cost-sharing and program duration requirements. Proposed § 60.3(a) would provide the same requirements. However, in order to parallel the statutory language found in the Animal Health Protection Act, § 60.3(a) would vary slightly from § 373.3(a) by also referring to Indian tribes among the list of cooperators.

Proposed §§ 373.3(b) and 60.3(b) set forth the basic criteria for determining the Federal share of costs in an emergency program. In connection with an emergency involving a plant pest or noxious weed (in the case of proposed 7 CFR part 373), or a pest or disease of livestock (in the case of proposed 9 CFR part 60), the Secretary could make payments of Federal funds of up to 50 percent of emergency program costs. We would refer to this percentage figure as the ‘‘Federal base percentage.’’ Further, the Secretary, in consultation with the Office of Management and Budget (OMB), could increase or decrease the Federal share of emergency program costs relative to the Federal base percentage as follows:

• *Timing of program and its effect on total program costs.* If the Secretary determines that a higher level of Federal involvement in the early stages of an emergency program would lead to lower total emergency program costs, then the Secretary, in consultation with OMB, could increase the Federal share of emergency program costs by up to 30 percent above the Federal base percentage during the first 8 months after commencement of the emergency program, and could increase the Federal share of emergency program costs by up to 15 percent above the Federal base percentage from the ninth month through the 24th month after commencement of the emergency program.

• *The extent of affected versus nonaffected areas.* If the Secretary determines that the area or value of resources at risk in the United States is at least 10 times greater than the area or value of resources covered by the emergency program, then the Secretary, in consultation with OMB, could increase the Federal share of emergency program costs by up to 20 percent above the Federal base percentage. The area or value of resources at risk in the United States would include those areas where the pest or disease could spread within 1 year in the absence of any action to control or eradicate the pest or disease. We invite comment on the criteria that would be used in making such a determination.

• *Lack of financial resources.* If the Secretary determines that a State or other cooperator lacks the financial resources required to cover its share of emergency program costs, or lacks the capability to quickly access those resources, then the Secretary, in consultation with OMB, could increase the Federal share of emergency program costs by up to 10 percent above the Federal base percentage during the first 24 months after commencement of the emergency program. In order to qualify for this additional Federal funding, the cooperator would have to demonstrate either that a funding body, such as the State legislature, was unable to meet in time to provide the necessary resources, or that the affected State or local area was experiencing a significant and unexpected reduction in resources. We invite comment on the proposed criteria for determining a cooperator's lack of financial resources, as well as the need for and effect of limiting this higher Federal share in the case of a priority pest or disease to the first 24 months of the emergency program.

• *Commercial interest.* If the Secretary determines that the pest or disease directly affects one or more State commercial interests within the area covered by the emergency program, then the Secretary, in consultation with OMB, could reduce the Federal share of emergency program costs by up to 3 percent under the Federal base percentage.

• *Priority pests and diseases.* If the emergency involves a priority plant pest or noxious weed (in the case of proposed 7 CFR part 373) or a priority pest or disease of livestock (in the case of proposed 9 CFR part 60), then the Secretary, in consultation with OMB, could pay up to 100 percent of the total emergency program costs authorized under proposed part 373 or proposed part 60 during the first 24 months after commencement of the emergency program. We invite comment on the need for and effect of limiting this higher Federal share in the case of a priority pest or disease to the first 24 months of the emergency program.

• *Certain emergency program activities.* We believe that particular emergency situations may necessitate deviation from the cost-sharing percentages just discussed, either for an entire emergency program or for particular activities of an emergency program. Therefore, we are proposing that the Secretary may determine, in consultation with OMB and the cooperating entities, that an emergency program or certain activities within that emergency program be excluded from the percentage calculations provided under proposed §§ 373.3(b) and 60.3(b) or, alternatively, be subject to a different Federal share of emergency program costs. We expect that such authority would be exercised infrequently.

• *Percentages are cumulative.* Any applicable percentage changes to the Federal share of emergency program costs, as just discussed, would be cumulative, but could not exceed 100 percent of total emergency program costs authorized under proposed 7 CFR part 373 or proposed 9 CFR part 60.

• *Payment of compensation.* If the emergency program includes the payment of compensation, then the cost-sharing percentage would be applied either to the emergency program costs in total (including payments of compensation) or to the compensation and non-compensation components separately, at the discretion of the Secretary.

The funding percentages provided in proposed §§ 373.3 and 60.3 would serve as guidelines for the Federal government, States, and other cooperator participants to facilitate long-term cooperator resource planning and funding decisions, and may vary slightly in actual application. The Federal share percentages would not be dependent on the source of funds (*e.g.*, transfers from the Commodity Credit Corporation, annual appropriations, user fees). Traditionally, however, the source of Federal funds in the event of an emergency is the Commodity Credit Corporation.

Proposed §§ 373.3(c) and 60.3(c) would provide that the Federal share of emergency program costs, as determined under proposed §§ 373.3(b) and 60.3(b), would be subject to periodic review by the Secretary, in consultation with OMB, as conditions warrant.

We recognize the uncertainties inherent in formulating the specific percentages and thresholds in our proposed cost-sharing arrangements, and we invite comment and suggestions on alternatives to those proposed here. We also recognize that implementing predetermined cost-sharing arrangements such as we are proposing is a complex undertaking, involving many entities and a variety of legal authorities and organizational capabilities. We solicit your comments on the length of time necessary to implement these arrangements. We anticipate that a minimum of 60 days would be necessary to implement these arrangements once the applicable requirements are published as a final rule.

Shortfalls in Obligations and Other Funding Adjustments

Proposed §§ 373.4 and 60.4 would provide that the cost allocation assigned to the Federal government and each cooperator would be based on cumulative funding over the duration of the emergency program. Should the Federal government or any cooperator fail to provide adequate program funding to meet their funding obligation for a given year, then such funding shortfall would have to be made up prior to the end of the emergency program. Similarly, should the shortfall in funding by the Federal government or any cooperator require other parties to provide funding that exceeds their obligation in any given year, then those parties making excess payments in one year would have the latitude to reduce their payments in subsequent years in an amount that equals the amount of excess payment.

Proposed §§ 373.4 and 60.4 would also provide that, to the extent that actual funding levels change, the difference (plus or minus) would be applied to the calculation of cumulative funding as soon as practicable. In addition, if approved by APHIS in consultation with cooperators, any in-kind payment (*i.e.*, in the form of services, equipment, etc.) provided by a cooperator could be counted towards their funding obligation if the in-kind payment represents an expense that is not a normal program cost to the cooperator and directly affects emergency program objectives.

Activities Not Subject to Cost Sharing

Under proposed §§ 373.5 and 60.5, certain activities conducted by APHIS and other Federal entities that relate to the control and eradication of pests and diseases would not be subject to the cost-sharing requirements in this proposal. Specifically, the Federal government would provide full funding and cost-sharing criteria would not apply to control and eradication activities that do not directly affect the targeted area, pest, or disease that is the focus of the emergency program. For example, this would include national surveys and diagnostics; research not specific to the outbreak; public awareness not related to the outbreak; control and eradication programs in other countries; preclearance of passengers, cargo and means of conveyance; and port-of-entry inspection of passengers, cargo and means of conveyance.

Implementing Agreements

As discussed previously under proposed §§ 373.3(a) and 60.3(a), the payment of Federal funds by the Secretary for emergency program costs would depend, in part, upon the ''agreement'' of the States or other cooperators to participate in the emergency program.

Proposed §§ 373.6 and 60.6 would provide that the Secretary may, as a condition of providing the Federal funding pursuant to proposed § 373.3 (in the case of emergencies involving plant pests and noxious weeds) or § 60.3 (in the case of emergencies involving pests and diseases of livestock), enter into agreements with cooperating entities. Such agreements would cover the particular responsibilities of the cooperating parties, including funding obligations, in conducting the emergency program.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by OMB.

Below is an economic analysis for the proposed rule that would establish criteria for determining the share of financial responsibility of the Federal government, States, and other cooperators should an outbreak of an animal or plant pest or disease occur in the United States. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866, as well as an analysis of the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act.

Under the Plant Protection Act (7 U.S.C. 7701–7772) and the Animal Health Protection Act (7 U.S.C. 8301–8317), the Secretary of Agriculture is authorized to regulate plants and animals, their products, and other articles in foreign and interstate commerce; to hold, treat, and destroy such articles; and to cooperate with various entities, including State and local governments and industry groups (cooperators), to carry out programs to detect, control, and eradicate plant pests, noxious weeds, and pests and diseases of livestock. These Acts also provide the Secretary additional regulatory and funding authority, including the payment of compensation, in cases of pest and disease emergencies.

Economic Analysis

The Federal Government, primarily through APHIS, has the statutory responsibility to prevent the introduction, spread and establishment of pests or diseases of plants and animals in the United States. APHIS frequently conducts prevention, detection, control and eradication programs in conjunction with State counterparts. In a cooperative arrangement, the program funding is generally shared by APHIS and the State, where each party is financially responsible for a portion of the program costs. The funding allocations in these arrangements have varied depending upon the specific pest or disease and its location. There appears to be a lack of consistent basis for determining how the financial responsibility between the Federal Government and its cooperator is allocated. This has raised questions regarding the appropriate Federal role in light of the large increase in emergency funding transfers by APHIS over the past few years.

This proposed rule sets forth specific cost-sharing percentages to apply to certain emergency program activities, including the payment of compensation. Greater certainty about cost-sharing would facilitate improved planning and funding decisions by the Federal government and its cooperators regarding future plant and animal pest and disease emergency programs.

Need for Regulation

The public good aspect of pest and disease management suggests that prevention, detection, control, and eradication programs are most effectively delivered under governmental guidance. These governmental actions confer direct benefits to affected entities and the public at large. Without such actions by the Federal Government, States, and other cooperators, it is unlikely that affected individuals could or would take sufficient actions to prevent the establishment and spread of exotic pests and diseases of plants and livestock.

Some animal pests and diseases threaten not only livestock but also wildlife populations that inhabit public land. Certain animal pests and diseases may also be transmitted to humans. Because of the interstate movement of livestock and poultry through marketing and distribution channels, animal pests and diseases are further able to spread rapidly beyond a localized area. Rapid response by the Federal Government, States, and other cooperators at the first sign of a pest or disease outbreak is critical to prevent widespread losses. Greater funding certainty would be one way to enhance the timeliness and effectiveness of responses to pest or disease outbreaks.

APHIS, from its inception over 30 years ago, has participated in a variety of emergency programs with cooperators to detect, control, and eradicate pests and diseases of plants and animals. In the early 1990s, emergency programs involving new pest and disease outbreaks were largely associated with fruit fly incursions. When a pest was introduced into the United States on several occasions in the same geographical locations, such as Mediterranean fruit fly (Medfly) in Florida and California, Federal and State roles became more defined with each reintroduction. Memoranda-of-understanding as well as work plans and cost-sharing formulas were agreed upon on an annual basis. However, since the mid-1990's, there has been a dramatic increase in the number of new pest and disease occurrences beginning with the discovery of Karnal bunt in 1995. The cost to the Federal government has correspondingly risen as it responds to these emergency outbreaks. Given today's highly mobile environment and global agricultural economy, the threat to U.S. agricultural and nonagricultural resources from new pest and disease incursions is ever present. The need for a more consistent and predictable cost allocation approach among program participants is warranted in a world of constrained resources.

Recent occurrences of the highly contagious foot-and-mouth (FMD) disease in the United Kingdom and other countries demonstrate the need for advanced planning to minimize delays in eradicating an outbreak of serious livestock diseases such as FMD. The specific cost-sharing percentages between the Federal government and its cooperators as set forth in this proposed rule would eliminate uncertainty in program funding allocations, which could delay eradication activities. The fixed-formula approach to cost-sharing as set forth in this proposed rule would make resource planning decisions simpler for all parties and lessen the chances for delays in eradication.

Economic Impact

The intent of the proposed rule is to lessen funding uncertainties in conducting emergency programs. An examination of the funding of past emergency programs reveals that cost allocations have often been based implicitly on three factors: The size of the outbreak, the area at risk beyond the initial outbreak, and the commercial interest at stake. The specific percentages for cost sharing as provided for in this proposed rule incorporate these implicit elements. Particular pest or disease outbreaks may necessitate deviations from these percentages. As compared to the current flexible cost arrangement, some redistribution of costs among cooperators may occur due to the greater specificity in cost-sharing percentages. The most significant change in this proposed rule would be the provision that stipulates that the amount of Federal contribution should be based on a specified duration of an infestation or disease occurrence. The Federal government would be less obligated financially for emergency programs that are extended in time.

This proposed rule specifies a base Federal share of up to 50 percent (*i.e.*, Federal base percentage). If the funding is for an emergency situation which has occurred within the previous 8 months, an additional allotment of up to 30 percent could be added to the Federal base percentage. For emergency programs that are 9 months to 2 years in duration, the Federal contribution could be increased by up to 15 percent above the Federal base percentage. A deduction of up to 3 percent could be applied in situations where the pest or disease affects one or more commercial interests within an area covered by the emergency program.

Pest and disease outbreaks may occur in States that lack the resources or the incentive to make large expenditures. Further consideration may be given to States that are financially unable to contribute. In such cases, the Federal share may increase by up to 10 percent. Up to 20 percent could also be allotted by the Federal government in situations where the pest or disease threat outside the outbreak area may be significant. Such was the case with the recent outbreak of the Asian longhorned beetle, which affected urban trees in New York and Illinois. Should this pest spread to forest trees in the affected States and beyond, the impact could be economically and environmentally devastating.

The application of the cost-sharing percentages as specified in this proposed rule is anticipated to increase the costs to the Federal government in the first 2 years of a pest or disease outbreak because of the Federal additional share (*i.e.*, up to 30 percent and 15 percent) paid, but may lower costs in subsequent years. Table 2 shows that in FY 1999, APHIS spent about $46 million in emergency funds for three pest outbreaks that would have been subject to the cost-sharing provisions as proposed in this rule. The actual Federal share comprised 55 percent of total program costs. Cooperators contributed the remaining 45 percent of overall program costs ($37 million). Due to the detection of citrus canker in the previous year, under the proposed rule, the Federal cost share in FY 1999 would have been slightly higher by 2 percent. For FY 2000, the overall Federal contribution to emergency programs, if allocated according to the criteria specified in this proposed rule, would have been lower by nearly $12 million, and the Federal cost-share would have fallen by about 5 percent. In FY 2001, the cost savings would have been larger. Applying the Federal cost-share rate according to the criteria specified in the proposed rule would have saved about $64 million in FY 2001, lowering the overall Federal share from 78 percent (the actual cost share percentage in that year) to 58 percent.

The adoption of the proposed rule is anticipated to yield savings to the Federal Government in future years largely due to the limits placed on Federal financial contributions to long-term emergency programs, especially those involving commodities with commercial interests. As an emergency situation dissipates, a greater share of the funding of these extended programs should appropriately be assumed by the affected States and other cooperators who, with time, would be in a better position to obtain the necessary resources to address a long-term pest or disease situation.

Additionally, the increased program effectiveness that is expected to result from more reliable State participation and funding certainty would yield economic and environmental benefits over the long run. These gains are expected to balance the costs to State cooperators from redistribution.

TABLE 2.—DISTRIBUTION OF THE FEDERAL SHARE IN EMERGENCY PROGRAMS, ACTUAL AND UNDER PROPOSED RULE

($ millions) [1]

Program	Actual federal share			Actual non-Federal share	Total program cost	Proposed Federal percentage share	Federal share under proposed rule	Savings under proposed rule
	Operations	Compensation	Total					
FY 1999								
ALB [2, 3]	9,010	0	9,010	2,572	11,582	75	8,687	324
Citrus canker	25,000	0	25,000	22,441	47,441	57	27,041	−2,041
Medfly	11,935	0	11,935	12,353	24,288	47	11,415	520
Total	45,945	0	45,945	37,366	83,311		47,143	−1,198
% of total			55%				57%	
FY 2000								
ALB [2, 3]	16,180	0	16,180	1,555	17,735	60	10,641	5,539
Belgian sheep	1,400	700	2,100	0	2,100	77	1,617	483
Citrus canker	81,821	9,000	90,821	53,981	144,739	57	82,501	8,320
Pierce's disease	22,289	0	22,289	32,423	54,712	62	33,921	−11,632
Plum pox virus	3,653	13,200	16,853	6,800	23,653	62	14,665	2,188
Scrapie [3]	11,791	1,200	12,991	0	12,991	47	6,106	6,885
Total	137,134	24,100	161,234	94,696	255,930		149,451	11,783
% of total			63%				58%	
FY 2001								
ALB [2, 3]	51,698	0	51,698	2,654	54,352	60	32,611	19,087
Belgian sheep	1,578	0	1,578	0	1,578	62	978	600
Bovine TB [4]	14,524	45,600	60,124	10,400	70,524	47	33,146	26,978
Citrus canker	59,574	57,872	117,446	41,235	158,681	62	98,382	19,064
Chronic wasting disease	701	1,950	2,651	2,200	4,851	72	3,493	−842
Karnal bunt	1,223	6,100	7,323	2,000	9,323	47	4,382	2,941
Plum pox virus	2,112	0	2,112	2,500	4,612	62	2,859	−747
Rabies	4,200	0	4,200	8,886	13,086	52	6,805	−2,605
Total	135,610	111,522	247,132	69,875	317,007		182,657	64,475
% of total			78%				58%	

[1] Unless otherwise indicated, Federal expenditures for emergency programs are based on transfer funds from the CCC. These figures represent funds available for use in a fiscal year.

[2] ALB = Asian longhorned beetle.

[3] The actual Federal share included funds from CCC transfers and agency-level appropriated funds available for emergency activities.

[4] TB = Tuberculosis.

Economic Effects on Small Entities

The Regulatory Flexibility Act requires that agencies specifically consider the economic effect of their rules on small entities. The Small Business Administration (SBA) has established guidelines for determining when establishments are to be considered small under the Act. This proposed rule is not expected to directly affect commercial entities as defined by the SBA.

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

Executive Order 12372

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

Executive Order 12988

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

Executive Order 13132

We have reviewed this proposed rule under Executive Order 13132 and determined that it does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The provisions contained in this proposed rule would not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

The Administrator has examined the federalism implications of the requirements in this proposal, *i.e.*, criteria for determining the Federal share of emergency program costs relative to States and other cooperators in the event of animal or plant pest or disease outbreak in the United States. The Administrator believes that this action adheres to Constitutional principles for the exercise of Federal power and is clearly authorized by statutory authorities delegated to APHIS.

This proposed action focuses primarily on the criteria and cost-sharing percentages that would be used to determine the Federal share of emergency program costs. The proposed rule does not absolutely impose any new compliance costs on States or local governments or require that States or local governments incur new costs in support of emergency programs to prevent, detect, control, or eradicate disease.

APHIS already conducts cooperative control and eradication programs in conjunction with State counterparts and other cooperators. In a cooperative arrangement, program funding is generally shared by APHIS and the State, with each party being financially responsible for a portion of the program costs. The cost-sharing arrangements generally have been the result of case-by-case negotiations between APHIS and cooperators. The funding allocations in these arrangements have varied depending on the specific pest or disease and its location. We believe that establishing criteria, including predetermined percentages of the Federal share of program costs, will foster greater certainty about emergency program cost sharing and facilitate improved planning and funding decisions by the Federal government and its cooperators.

State and local governments have the opportunity to comment on this proposed rule, and we encourage them to submit comments on federalism concerns or any other issues.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, tribal governments, and the private sector. Under section 202 of the UMRA, APHIS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ‘‘Federal mandates’’ that may result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires APHIS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

We do not expect, based on historical data, that this proposed rule would contain Federal mandates (under the regulatory provisions of Title II of the UMRA) that may result in new expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–062–1. Please send a copy of your comments to: (1) Docket No. 02–062–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

The Secretary of Agriculture may, as a condition of providing Federal funding under proposed 7 CFR part 373 and proposed 9 CFR part 60, enter into agreements with States and other cooperating entities. Such agreements would specify the particular responsibilities, including funding obligations, of the Federal Government and cooperators in conducting the emergency program. Such agreements also could impose other information collection and recordkeeping requirements on affected States or other cooperating entities. We are therefore asking OMB to approve, for 3 years, our use of this information collection.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Note: Our estimate below shows a minimal burden of 1 hour total because the need for States or other cooperating entities to enter into such agreements, as described above, would be at the Secretary's discretion. Further, the scope and nature of the potential information collection or recordkeeping burden, if any, would depend on the particular agreement. Therefore, we currently are not collecting information until the Secretary enters into such agreements with cooperators. At that time, we will describe any specific burden, as well as the estimated number of respondents and estimated burden accordingly based on the number of expected respondents.

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.0 hour per response.

Respondents: States and other cooperating entities who enter into agreements with the Secretary of Agriculture in connection with an emergency program involving a plant pest or noxious weed or a pest or disease of livestock.

Estimated annual number of respondents: 1.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 1.

Estimated total annual burden on respondents: 1 hour.

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 373

Indemnity payments, Plant diseases and pests, Plant products, Plants (Agriculture).

9 CFR Part 60

Animal diseases and pests, Indemnity payments, Livestock, Poultry and poultry products.

Accordingly, we propose to amend 7 CFR chapter III by adding a new part 373, and to amend 9 CFR chapter I, subchapter B, by adding a new part 60 to read as follows:

PART 373—COST SHARING FOR PLANT HEALTH EMERGENCY PROGRAMS

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

§ 373.1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any person authorized to act for the Administrator.

Commencement of the emergency program. The date that the Secretary determines an emergency exists or the date that emergency funding is approved, whichever comes first.

Cooperator(s). A State or political subdivision of a State, a domestic organization or association, or other person who participates in an emergency program with the Federal Government.

Emergency program. Activities carried out under the authority of the Plant Protection Act (7 U.S.C. 7701–7772) in connection with an emergency, including delimiting surveys; testing and related diagnostic activities; regulatory enforcement; chemical, biological, mechanical, and other detection, control, and eradication activities, including destruction and disposal of plants, plant products, and other articles; the payment of compensation; and research, methods development, and public information activities carried out specifically in connection with an emergency.

Emergency program costs. Financial, personnel, and other resources necessary to carry out an emergency program, without regard to the entity or individual that provides the resources or the manner in which they are provided.

Federal base percentage. The initial percentage share of emergency program costs the Secretary is authorized to pay in connection with an emergency involving a plant pest or noxious weed.

OMB. The Office of Management and Budget of the United States Government.

Secretary. The Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture authorized to act for the Secretary.

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

§ 373.2 Priority plant pests and noxious weeds.

The Administrator may identify certain plant pests and noxious weeds as priority plant pests and noxious weeds. In making such an identification, the Administrator shall consider the degree of contagion and the human health and market effects of the plant pest or noxious weed and other relevant factors. The Administrator may notify the public from time to time, through publication of a list in the **Federal Register**, of the priority plant pests and noxious weeds.

§ 373.3 Federal share of emergency program costs.

(a) *General.* In connection with an emergency involving a plant pest or noxious weed and upon agreement of the States or political subdivisions of States, domestic organizations or associations, or other persons to participate in an emergency program, the Secretary may pay, subject to the availability of funding, emergency program costs as provided in paragraph (b) of this section. Unless the Secretary determines that payments for a longer period are necessary, such payments may be made for no more than 10 years for any emergency program, or, for emergency programs begun prior to [*effective date of final rule*], for no more than 5 years after that date. However, if the same plant pest or noxious weed occurs in a location that is geographically separate from the original outbreak, or reoccurs in the area of the original outbreak following a prescribed time period after eradication is completed, as determined by a USDA scientific assessment, then it could be considered a new outbreak and subject to new cost-sharing and program duration requirements.

(b) *Determining Federal share of costs.* In connection with an emergency involving a plant pest or noxious weed, the Secretary may make payments of Federal funds of up to 50 percent (*i.e.*, Federal base percentage) of emergency program costs. Further, the Secretary, in consultation with OMB, may increase or decrease the Federal share of emergency program costs relative to the Federal base percentage as follows:

(1) *Timing of program and its effect on total program costs.* If the Secretary determines that a higher level of Federal involvement in the early stages of an emergency program would lead to lower total emergency program costs, then the Secretary, in consultation with OMB, may increase the Federal share of emergency program costs by up to 30 percent above the Federal base percentage during the first 8 months after commencement of the emergency program, and may increase the Federal share of emergency program costs by up to 15 percent above the Federal base percentage from the ninth month through the 24th month after commencement of the emergency program.

(2) *The extent of affected versus nonaffected areas.* If the Secretary determines that the area or value of resources at risk in the United States is at least 10 times greater than the area or

value of resources covered by the emergency program, then the Secretary, in consultation with OMB, may increase the Federal share of emergency program costs by up to 20 percent above the Federal base percentage. The area or value of resources at risk in the United States includes those areas where the plant pest or noxious weed could spread within 1 year in the absence of any action to control or eradicate the pest or disease.

(3) *Lack of financial resources.* If the Secretary determines that a State or other cooperator lacks the financial resources required to cover its share of emergency program costs, or lacks the capability to quickly access those resources, then the Secretary, in consultation with OMB, may increase the Federal share of emergency program costs by up to 10 percent above the Federal base percentage during the first 24 months after commencement of the emergency program. To qualify for this additional Federal funding, the cooperator must demonstrate either that a funding body, such as the State legislature, is unable to meet in time to provide the necessary resources, or that the affected State or local area is experiencing a significant and unexpected reduction in resources.

(4) *Commercial interest.* If the Secretary determines that the plant pest or noxious weed directly affects one or more State commercial interests within the area covered by the emergency program, then the Secretary, in consultation with OMB, may reduce the Federal share of emergency program costs by up to 3 percent under the Federal base percentage.

(5) *Priority plant pests and noxious weeds.* If the emergency involves a priority plant pest or noxious weed, as provided in § 373.2 of this part, then the Secretary, in consultation with OMB, may pay up to 100 percent of the total emergency program costs authorized under this part during the first 24 months after commencement of the emergency program.

(6) *Certain emergency program activities.* The Secretary may determine, in consultation with OMB and the cooperating entities listed in paragraph (a) of this section, that an emergency program or certain activities within that emergency program be excluded from the percentage calculations provided in this paragraph, or, alternatively, be subject to a different Federal share of emergency program costs.

(7) *Percentages are cumulative.* Any applicable percentage changes to the Federal share of emergency program costs, as provided in paragraphs (b)(1) through (b)(6) of this section may be cumulative, but may not exceed 100 percent of total emergency program costs authorized under this part.

(8) *Payment of compensation.* If the emergency program includes the payment of compensation, then the cost-sharing percentage will be applied either to the emergency program costs in total (including payments of compensation) or to the compensation and non-compensation components separately, at the discretion of the Secretary.

(c) *Periodic review.* The Federal share of emergency program costs, as determined under paragraph (b) of this section, is subject to periodic review by the Secretary, in consultation with OMB, as conditions warrant.

§ 373.4 Shortfall in obligations and other funding adjustments.

(a) The cost allocation assigned to the Federal Government and each cooperator is to be based on cumulative funding over the duration of the emergency program. Should the Federal Government or any cooperator fail to provide adequate program funding to meet their funding obligation for a given year, then such funding shortfall must be made up prior to the end of the emergency program. Similarly, should the shortfall in funding by one or more parties require other parties to provide funding that exceeds their obligation in any given year, then those parties making excess payments in one year will have the latitude to reduce their payments in subsequent years in an amount that equals the amount of excess payment.

(b) To the extent that actual funding levels change, the difference (plus or minus) is to be applied to the calculation of cumulative funding as soon as practicable. In addition, if approved by APHIS in consultation with cooperators, any in-kind payment (*i.e.*, in the form of services, equipment, etc.) provided by a cooperator will be counted towards their funding obligation if the in-kind payment represents an expense that is not a normal program cost to the cooperator and directly affects emergency program objectives.

§ 373.5 Activities not subject to cost sharing.

The Federal Government will provide full funding and cost-sharing criteria will not apply to control and eradication activities that do not directly affect the targeted area, pest, or disease that is the focus of the emergency program. This would include, for example, national surveys and diagnostics; research not specific to the outbreak; public awareness not related to the outbreak; control and eradication programs in other countries; preclearance of passengers, cargo and means of conveyance; and port-of-entry inspection of passengers, cargo and means of conveyance.

§ 373.6 Implementing agreements.

The Secretary may, as a condition of providing the Federal funding pursuant to § 373.3, enter into agreements with cooperating entities. Such agreements will specify the particular responsibilities, including funding responsibilities, of the Federal Government and cooperators in conducting the emergency program.

PART 60—COST SHARING FOR ANIMAL HEALTH EMERGENCY PROGRAMS

Sec.

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

§ 60.1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any person authorized to act for the Administrator.

Commencement of the emergency program. The date that the Secretary determines an emergency exists or the date that emergency funding is approved, whichever comes first.

Cooperator(s). A State or political subdivision of a State, a domestic organization or association, Indian tribe, or other person who participates in an emergency program with the Federal Government.

Emergency program. Activities carried out under the authority of the Animal Health Protection Act in connection with an emergency, including delimiting surveys; testing and related diagnostic activities; regulatory enforcement; chemical, biological, mechanical, and other detection, control, and eradication activities, including destruction of animals, animal products, and other articles; the payment of compensation; and research, methods development, and public information activities carried out specifically in connection with an emergency.

Emergency program costs. Financial, personnel, and other resources necessary to carry out an emergency program, without regard to the entity or individual that provides the resources or the manner in which they are provided.

Federal base percentage. The initial percentage share of emergency program costs the Secretary is authorized to pay in connection with an emergency involving a pest or disease of livestock.

OMB. The Office of Management and Budget of the United States Government.

Secretary. The Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture authorized to act for the Secretary.

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

§ 60.2 Priority pests and diseases of livestock.

The Administrator may identify certain pests and diseases of livestock as priority pests and diseases of livestock. In making such an identification, the Administrator shall consider the degree of contagion and the human health and market effects of the pest or disease of livestock and other relevant factors. The Administrator may notify the public from time to time, through publication of a list in the **Federal Register**, of the priority pests and diseases of livestock.

§ 60.3 Federal share of emergency program costs.

(a) *General.* In connection with an emergency involving a pest or disease of livestock and upon agreement of the States or political subdivisions of States, domestic organizations or associations, Indian tribes, or other persons to participate in an emergency program, the Secretary may pay, subject to the availability of funding, emergency program costs as provided in paragraph (b) of this section. Unless the Secretary determines that payments for a longer period are necessary, such payments may be made for no more than 10 years for any emergency program, or, for emergency programs begun prior to [effective date of final rule] for no more than 5 years after that date. However, if the same pest or disease of livestock occurs in a location that is geographically separate from the original outbreak, or reoccurs in the area of the original outbreak following a prescribed time period after eradication is completed, as determined by a USDA scientific assessment, then it could be considered a new outbreak and subject to new cost-sharing and program duration requirements.

(b) *Determining Federal share of costs.* In connection with an emergency involving a pest or disease of livestock, the Secretary may make payments of Federal funds of up to 50 percent (*i.e.*, Federal base percentage) of emergency program costs. Further, the Secretary, in consultation with OMB, may increase or decrease the Federal share of emergency program costs relative to the Federal base percentage as follows:

(1) *Timing of program and its effect on total program costs.* If the Secretary determines that a higher level of Federal involvement in the early stages of an emergency program would lead to lower total emergency program costs, then the Secretary, in consultation with OMB, may increase the Federal share of emergency program costs by up to 30 percent above the Federal base percentage during the first 8 months after commencement of the emergency program, or, alternatively, may increase the Federal share of emergency program costs by up to 15 percent above the Federal base percentage from the ninth month through the 24th month after commencement of the emergency program.

(2) *The extent of affected versus nonaffected areas.* If the Secretary determines that the area or value of resources at risk in the United States is at least 10 times greater than the area or value of resources covered by the emergency program, then the Secretary, in consultation with OMB, may increase the Federal share of emergency program costs by up to 20 percent above the Federal base percentage. The area or value of resources at risk in the United States includes those areas where the pest or disease of livestock could spread within 1 year in the absence of any action to control or eradicate the pest or disease.

(3) *Lack of financial resources.* If the Secretary determines that a State or other cooperator lacks the financial resources required to cover its share of emergency program costs, or lacks the capability to quickly access those resources, then the Secretary, in consultation with OMB, may increase the Federal share of emergency program costs by up to 10 percent above the Federal base percentage during the first 24 months after commencement of the emergency program. To qualify for this additional Federal funding, the cooperator must demonstrate either that a funding body, such as the State legislature, is unable to meet in time to provide the necessary resources, or that the affected State or local area is experiencing a significant and unexpected reduction in resources.

(4) *Commercial interest.* If the Secretary determines that the pest or disease of livestock directly affects one or more State commercial interests within the area covered by the emergency program, then the Secretary, in consultation with OMB, may reduce the Federal share of emergency program costs by up to 3 percent under the Federal base percentage.

(5) *Priority pests or diseases of livestock.* If the emergency involves a priority pest or disease of livestock, as provided in § 60.2 of this part, then the Secretary, in consultation with OMB, may pay up to 100 percent of the total emergency program costs authorized under this part during the first 24 months after commencement of the emergency program.

(6) *Certain emergency program activities.* The Secretary may determine, in consultation with OMB and the cooperating entities listed in paragraph (a) of this section, that an emergency program or certain activities within that emergency program be excluded from the percentage calculations provided in this paragraph, or, alternatively, be subject to a different Federal share of emergency program costs.

(7) *Percentages are cumulative.* Any applicable percentage changes to the Federal share of emergency program costs, as provided in paragraphs (b)(1) through (b)(6) of this section, may be cumulative, but may not exceed 100 percent of total emergency program costs authorized under this part.

(8) *Payment of compensation.* If the emergency program includes the payment of compensation, then the cost-sharing percentage will be applied either to the emergency program costs in total (including payments of compensation) or to the compensation and non-compensation components separately, at the discretion of the Secretary.

(c) *Periodic review.* The Federal share of emergency program costs, as determined under paragraph (b) of this section, is subject to periodic review by the Secretary, in consultation with OMB, as conditions warrant.

§ 60.4 Shortfall in obligations and other funding adjustments.

(a) The cost allocation assigned to the Federal Government and each cooperator is to be based on cumulative funding over the duration of the emergency program. Should the Federal Government or any cooperator fail to provide adequate program funding to meet their funding obligation for a given year, then such funding shortfall must be made up prior to the end of the emergency program. Similarly, should the shortfall in funding by one or more parties require other parties to provide funding that exceeds their obligation in any given year, then those parties making excess payments in one year will have the latitude to reduce their payments in subsequent years in an amount that equals the amount of excess payment.

(b) To the extent that actual funding levels change, the difference (plus or minus) is to be applied to the calculation of cumulative funding as soon as practicable. In addition, if approved by APHIS in consultation with cooperators, any in-kind payment (*i.e.*, in the form of services, equipment, etc.) provided by a cooperator will be counted towards their funding obligation if the in-kind payment represents an expense that is not a normal program cost to the cooperator and directly affects emergency program objectives.

§ 60.5 Activities not subject to cost sharing.

The Federal Government will provide full funding and cost-sharing criteria will not apply to control and eradication activities that do not directly affect the targeted area, pest, or disease that is the focus of the emergency program. This would include, for example, national surveys and diagnostics; research not specific to the outbreak; public awareness not related to the outbreak; control and eradication programs in other countries; preclearance of passengers, cargo and means of conveyance; and port-of-entry inspection of passengers, cargo and means of conveyance.

§ 60.6 Implementing agreements.

The Secretary may, as a condition of providing the Federal funding pursuant to § 60.3, enter into agreements with cooperating entities. Such agreements will specify the particular responsibilities, including funding responsibilities, of the Federal Government and cooperators in conducting the emergency program.

Done in Washington, DC, this 1st day of July 2003.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 03–17042 Filed 7–7–03; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Chs. II, III, and X

RIN 1904–AA78

Semiannual Regulatory Agenda; Clarification

AGENCY: Department of Energy.

ACTION: Semiannual Regulatory Agenda; clarification.

SUMMARY: The Department of Energy is clarifying its discussion of one of the items (Residential Furnaces, Boilers, and Mobile Home Furnaces) in the Semiannual Regulatory Agenda, 68 FR 30192, 30195 (May 27, 2003).

DATES: This correction is made as of July 8, 2003.

FOR FURTHER INFORMATION CONTACT: For information on Energy Efficiency Standards for Residential Furnaces, Boilers, and Mobile Home Furnaces contact: Mohammed Khan, Room 1J–018, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, *mohammed.khan@hq.doe.gov*, (202) 586–7892. For information on the Regulatory Agenda in general, please contact: Richard L. Farman, Room 6E–078, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, *richard.farman@hq.doe.gov*, (202) 586–8145.

SUPPLEMENTARY INFORMATION: In the fall of 2002, DOE designated the Energy Efficiency Standards for Residential Furnaces, Boilers, and Mobile Home Furnaces as high priority in *The FY2003 Priority Setting Summary Report and Actions Proposed*, which the Office of Building Technologies Program, U.S. Department of Energy, published on August 22, 2002.

In the Department of Energy's most recent Semiannual Regulatory Agenda notice, 68 FR 30195 (May 27, 2003), the Department inadvertently noted in its discussion of the Energy Efficiency Standards for Residential Furnaces, Boilers, and Mobile Home Furnaces that ''the Department is reclassifying this action as low priority, pending further review.''

The Department of Energy has not reclassified this action as a low priority and remains committed to getting public input before making decisions on the priorities for its rulemakings. As the Office of Building Technologies Program described in its 1996 Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products (Process Rule), 61 FR 36974, 36976, 36982 (July 15, 1996), the program will prepare an analysis of pending or prospective rulemakings at least once a year. The program will invite the public to review and comment on the program's priority analysis prior to making any changes to its priority designation. As noted in the Semiannual Regulatory Agenda published May 27, 2003, the program will be seeking comments from stakeholders regarding the priority status of Residential Furnaces, Boilers, and Mobile Home Furnaces. In addition, the program will be seeking comments on its prioritization of all current rulemakings this summer. The program fully intends to follow the Process Rule and provide stakeholders with an opportunity to comment.

Issued in Washington, DC, on July 2, 2003.

Douglas L. Faulkner,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 03–17196 Filed 7–7–03; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AE41

Development Company Loan (504) Program Changes

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: In response to an Advanced Notice of Proposed Rulemaking (''ANPRM'') published by the U.S. Small Business Administration (''SBA'' or ''the Agency'') on December 6, 2002, SBA solicited comments on the Certified Development Company (''CDC'') Loan Program (the ''CDC Program'' or the ''504 Program''). Based on the comments received and due to SBA's desire to improve 504 Program delivery to small businesses, SBA proposes to amend the regulations governing the 504 Program.

The most significant regulations that SBA proposes to change are those governing a CDC's area of operations; a CDC's organizational structure; the requirements for a new CDC or a CDC requesting to expand its territory; the ''adequately served'' standard; and whether a CDC may participate in other SBA loan programs. Also, to allow for greater delegation of authority to CDCs, the proposed rule includes expanded sections on the Accredited Lender Program (''ALP''), the Premier Certified Lender Program (''PCLP'') and a simplification and clarification of the