

- 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