

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