

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