

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**

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**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