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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93–075–2]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the list of suppressive areas under the witchweed quarantine and regulations by adding and deleting areas in North Carolina and South Carolina. These changes affected 7 counties in North Carolina and 2 counties in South Carolina. These actions were necessary in order to impose certain restrictions on the interstate movement of regulated articles to prevent the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

EFFECTIVE DATE: April 18, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Terry McGovern, Operations Officer, Plant Protection and Quarantine, APHIS, USDA, room 646, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on October 6, 1993 (58 FR 51979–51982, Docket No. 93–075–1), we amended the witchweed quarantine and regulations by adding areas in Craven, Cumberland, Greene, Pender, and Pitt Counties in North Carolina, and areas in Horry County in South Carolina to the list of suppressive areas in § 301.80–2a of the regulations.

We also amended the list of suppressive areas by removing areas in Craven, Cumberland, Greene, Pender, Sampson, and Wayne Counties in North Carolina and Dillon and Horry Counties in South Carolina from the list of suppressive areas in § 301.80–2a of the regulations.

Comments on the interim rule were required to be received on or before December 6, 1993. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12291 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are adopting as a final rule, without change, the amendments in subpart "Witchweed" in 7 CFR part 301 that were published at 58 FR 51979–51982 on October 6, 1993.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 11th day of March 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–6186 Filed 3–17–94; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Parts 145 and 147

[Docket No. 92–151–2]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new administrative and laboratory procedures for examining and testing participating flocks and preventing and responding to disease outbreaks. The changes, which were voted on and approved by the voting delegates at the Plan's 1992 Biennial Conference, will keep the provisions of the Plan current with changes in the poultry industry, allow the use of state-of-the-art laboratory procedures, and allow the Plan to better respond to disease emergencies.

EFFECTIVE DATE: April 18, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, room 205, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, (301) 436–7768.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (referred to below as "the Plan") is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. Participation in all Plan programs is voluntary, but flocks, hatcheries, and dealers must qualify as "U.S. Pullorum-Typhoid Clean" before participating in any other Plan program. Also, regulations in 9 CFR part 82.34 require that no hatching eggs or newly hatched chicks from egg-type chicken breeding flocks may be moved interstate unless they are classified "U.S. Sanitation Monitored" under the Plan or they meet the requirements of a State classification plan determined by the Administrator of the Animal and Plant Health Inspection Service (APHIS) to be equivalent to the Plan, in accordance with 9 CFR 145.23(d).

The Plan identifies States, flocks, hatcheries, and dealers that meet certain disease control standards specified in the Plan's various programs. As a result, customers can buy poultry that has tested clean of certain diseases or that has been produced under disease-prevention conditions.

The regulations in 9 CFR parts 145 and 147 (referred to below as "the regulations") contain the provisions of the Plan. APHIS amends these

provisions from time to time to incorporate new scientific information and technologies within the Plan.

On August 25, 1993, we published in the **Federal Register** (58 FR 44782–44793, Docket No. 92–151–1) a proposal to amend the regulations by:

1. Adding definitions of *Administrator, Animal and Plant Health Inspection Service, serial,* and *suspect flock;*

2. Clarifying the recordkeeping requirements for flocks maintained primarily for the production of hatching eggs;

3. Providing for U.S. Department of Agriculture (USDA) approval of pullorum-typhoid tube agglutination antigens;

4. Allowing a sample of at least 500 birds, in lieu of the entire flock, to be tested by the State Inspector to qualify certain succeeding flocks for participation in the Plan's pullorum-typhoid program;

5. Removing provisions that allow two consecutive generations in egg-type chicken breeding flocks, meat-type chicken breeding flocks, and waterfowl, exhibition poultry, and game bird breeding flocks to go without testing for pullorum-typhoid;

6. Providing for the Plan to investigate any multi-State outbreak of a Plan disease;

7. Allowing the use of a federally licensed *Salmonella enteritidis* bacterin to vaccinate birds in egg-type chicken multiplier breeding flocks;

8. Providing for various sample sizes of live birds for bacteriological examination under the U.S. Sanitation Monitored program for egg-type chickens;

9. Changing the name of the U.S. Sanitation Monitored program for egg-type chickens to U.S. *S. enteritidis* Monitored;

10. Adding a USDA-approved polymerase chain reaction (PCR)-based DNA procedure as a method of diagnosing mycoplasma;

11. Adding the enzyme-linked immunosorbent assay (ELISA) as a basic screening test for mycoplasma;

12. Adding an alternative laboratory procedure for mycoplasma hemagglutination inhibition (HI) testing using a microtiter technique;

13. Providing for the most contemporary laboratory methods for use in environmental sample selection, *Salmonella* isolation, examination of *Salmonella* reactors, and program monitoring procedures for egg-type chicken breeding flocks, meat-type chicken breeding flocks, and waterfowl, exhibition poultry, and game bird breeding flocks; and

14. Amending the procedure for determining the status and effectiveness of sanitation monitored programs.

In addition to the changes discussed above, we also proposed to redesignate, revise, or amend certain footnotes in the regulations and remove paragraph designations where they appeared before individual definitions.

We solicited comments concerning our proposal for a 30-day comment period ending September 24, 1993. We received three comments by that date, from a State department of agriculture, a college of veterinary medicine, and a veterinary research laboratory. These comments are addressed below.

One comment referred to our proposal to amend § 145.23(d)(1) to allow the use of a federally licensed *Salmonella enteritidis* bacterin to vaccinate birds in egg-type chicken multiplier breeding flocks following the bacteriological examination of environmental samples collected when the birds were 2 to 4 weeks of age. The commenter asked if there was a decrease in the efficacy of the bacterin when older birds were vaccinated. The label on the licensed bacterin calls for birds to be vaccinated twice, once at 10 to 12 weeks of age, and again at 17 to 18 weeks of age; there are no instructions regarding older birds. Because the bacterin must be used in accordance with the label instructions, we believe that the regulations need not address the vaccination of older birds.

In our proposed amendment to § 147.7, "Standard test procedures for mycoplasma," the second sentence of paragraph (e)(2)(ii)(C) states that the dilution required to give four hemagglutination (HA) units is calculated by dividing the stock antigen HA titer by 8. One commenter stated that the stock antigen HA titer should be divided by 4 instead of 8. We disagree. The antigen titration is done with volumes of 50 µL. In the HI test, 25 µL of antigen is added to 25 µL of serum dilution. The antigen, then, must contain 4 HA units in 25 µL; the 4 HA units would then be doubled for 50 µL, so dividing by 8 is correct. Therefore, we did not make any changes in response to the comment.

Also in our proposed amendment to § 147.7, paragraph (e)(2)(iii)(E) calls for the serial dilution of 25 µL from a specified number of wells. One commenter suggested that such multiple transfers of volumes as small as 25 µL may be difficult using a multichannel pipettor due to incomplete volume transfer. We believe that no change in the regulations is necessary because multichannel pipettors calibrated to deliver the proper volume are readily available from commercial sources.

Proposed paragraph (e)(iv)(B)(3) of § 147.7 states that for the assay described in the paragraph to be valid, the backtitration of the antigen must be 1:4 or 1:8. One commenter suggested that the latter number should be omitted because a backtitration of 1:8 would result in potentially suppressed HI titers. We believe that the 4–HA to 8–HA range allows for realistic performance variation within the test while maintaining stringent quality control. As proposed, the protocol stated that the positive control must be within one dilution of the previously determined titer, so any loss of sensitivity would be detected if a backtitration approaching 8 HA units was suppressing the HI titers of samples. Therefore, we did not make any changes in response to the comment.

One commenter pointed out that the 1:5 serum dilution referred to in paragraph (e)(2)(v)(D)(*1*) of the proposed amendment to § 147.7 should actually be a 1:5.5 serum dilution. While 1:5.5 is actually correct, the ultimate serial dilutions of the sample would be 1:11, 1:22, 1:44, etc., each of which can be presented as the nearest standard dilution (1:10, 1:20, 1:40, etc.) without a loss of accuracy in the test. Therefore, we did not make any changes in response to the comment.

Proposed new paragraph (a)(5) of § 147.11 stated that the Analytical Profile Index for Enterobacteriaceae (API) system may be used to aid cultural identifications. One commenter noted that API is not the only such system that could be used. We agree and have changed § 147.11(a)(5) to indicate that systems other than API are available.

Two of the comments encouraged us to amend illustration 1 in § 147.11 to accurately reflect the procedures called for in the text of proposed new paragraph (a)(1) of § 147.11. As proposed, the text of § 147.11(a)(1) required the inoculation of non-selective plates in addition to two selective plating media. The commenters pointed out that the upper right-hand block of illustration 1 did not include the inoculation of non-selective plates. We agree, and have added the inoculation of non-selective plates to the upper right-hand block of illustration 1. The probability of isolating *Salmonella* from organ tissues will be enhanced if non-selective plating media are used in addition to selective plating media.

One of the commenters suggested that a reference to footnote 2 be added to the upper left-hand block of illustration 1, which refers to non-selective enrichment broths. Because footnote 2

to illustration 1 contains pertinent information concerning non-selective enrichment, we agree and have added a reference to footnote 2 in the upper left-hand block of illustration 1. The same commenter noted that we had omitted the word "broths" after the word "enrichment" in footnote 1 to illustration 1, and also suggested that the first sentence of footnote 2 be revised for the sake of clarity. We agree with both of these points and have added the word "broths" to footnote 1 and have revised the first sentence of footnote 2 to read "Beef extract or infusion broths and plates are preferred."

Another commenter suggested that illustrations 1 and 2 are difficult to follow and that wording should be added to the illustrations to indicate that *Salmonella pullorum* is a slow grower and produces a smaller colony than other *salmonellae*, that the production of H_2S is delayed or absent, and that the production of gas is weak or absent. We believe that the illustrations are easily understood and that the additional information suggested by the commenter is unnecessary. Each illustration contains a block referring to the use of "additional identification media and diagnostic systems," which includes means of biochemical identification and differentiation of bacteria. Further, we believe that a person conducting such tests would be familiar with the isolation of *Salmonella*, including the identification of characteristic colonies of pullorum and other *salmonellae* on various media. Therefore, we have made no changes in response to the comment.

Finally, paragraph (a)(2) of our proposed amendment to § 147.14 stated that culturing for the dependable recovery of *salmonellae* should include the use of preenrichment broths supplemented with ferrous sulfate. One of the commenters noted that there is debate regarding the usefulness of adding ferrous sulfate to overcome the inhibitory effects of conalbumin, and pointed out that the egg culture protocol included in recently published APHIS regulations ("Chicken Disease Caused by *Salmonella Enteritidis*") does not include the addition of ferrous sulfate. The "regulations" to which the commenter referred were actually proposed regulations published in the **Federal Register** on August 2, 1993 (58 FR 41048–41061, Docket No. 91–016–1) and, as such, have no regulatory effect. The protocols included in that proposed rule are still under review and will not become effective until a final rule is published. We believe that the ability of conalbumin to chelate metallic ions such as Fe^{3+} or Cu^{2+} has been clearly demonstrated by both Gelb and Harris (1980) and Tan and Woodworth (1969). Additionally, Board *et al.* (1991) demonstrated that the addition of iron to preenrichment broth aided in the recovery of *Salmonella enteritidis* from eggs. Therefore, we have made no changes in response to the comment.

In addition to the changes discussed above, we are making two other changes. First, we are adding Office of Management and Budget (OMB) control numbers to §§ 147.1, 147.2, 147.3, 147.5, 147.11, 147.12, 147.13, and 147.21. The existing paperwork requirements contained in those sections—not any new requirements that may be contained in this final rule—were approved by OMB after the proposed rule was published, so the control numbers must be added to the end of each of those sections. Second, we are correcting an out-of-date reference in § 147.43, which contains provisions regarding the Plan's General Conference Committee. In that section, there is a reference to the Assistant Secretary of Agriculture for Marketing and Transportation Services. In 1982, the Marketing and Transportation Services division was reorganized and renamed Marketing and Inspection Services, so we have corrected the reference in § 147.43 to reflect the current organization.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The changes contained in this document are based on the recommendations of representatives of member States, hatcheries, dealers, flockowners, and breeders who took part in the Plan's 31st Biennial Conference. Because participation in the Plan is voluntary, individuals are likely to remain in the program as long as the costs of implementing the program are lower than the added benefits they receive from the program. The changes in this final rule will keep the provisions of the Plan current with changes in the poultry industry, will allow the use of state-of-the-art laboratory and testing procedures, and will allow the Plan to better respond to disease emergencies.

Of the changes contained in this final rule, only two are expected to have more than a negligible economic effect on Plan participants. The amendment that will allow, in certain cases, a 500-bird sample to be tested in lieu of the entire flock will result in a cost savings for affected Plan participants because fewer tests will be required to qualify certain multiplier breeding flocks and succeeding flocks for participation in the Plan's pullorum-typhoid program. It is likely, however, that those savings will be offset by the amendment that increases testing requirements by removing, for all poultry except turkeys, provisions that allow two consecutive generations of breeding flocks to go without testing for pullorum-typhoid. The remaining items, because they are either administrative or procedural in nature, will not have a significant economic impact.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic 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 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget.

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 145 and 147 are amended as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for part 145 continues to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 145.1 is amended by adding, in alphabetical order, four new definitions to read as follows:

§ 145.1 Definitions.

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

* * * * *

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

* * * * *

Serial. The total quantity of completed product which has been thoroughly mixed in a single container and identified by a serial number.

* * * * *

Suspect Flock. A flock shall be considered, for the purposes of the Plan, to be a suspect flock if any evidence exists that it has been exposed to a communicable poultry disease.

* * * * *

3. In § 145.10, paragraph (d), the words "§ 145.23(d) and" are removed.

4. In § 145.10, a new paragraph (l) is added to read as follows:

§ 145.10 Terminology and classification; flocks, products, and States.

* * * * *

(l) *U.S. S. Enteritidis Monitored.* (See § 145.23(d).)

BILLING CODE 3410-34-P

Figure 13

BILLING CODE 3410-34-C

5. In § 145.12, paragraph (b), two new sentences are added after the first sentence to read as set forth below.

§ 145.12 Inspections.

* * * * *

(b) * * * Records shall include VS Form 9–2, "Flock Selecting and Testing Report"; VS Form 9–3, "Report of Sales of Hatching Eggs, Chicks, and Poults"; set and hatch records; egg receipts; and egg/chick orders or invoices. Records shall be maintained for 3 years. * * *

6. In § 145.14, paragraph (a)(1), at the end of the third sentence, the word "test." is removed and the words "and tube agglutination tests. Each serial of tube antigen shall be submitted by the antigen producer to the Department for approval upon manufacture and once a year thereafter as long as antigen from that serial continues to be made available for use." are added in its place.

7. In § 145.14, the introductory text of paragraph (a)(6), the third sentence is revised to read as follows:

§ 145.14 Blood testing.

* * * * *

(a) * * *

(6) * * * Testing to qualify flocks for Plan participation must include the testing of all birds in infected flocks and succeeding flocks for a 12-month period, and shall be performed or physically supervised by a State Inspector; Provided, That at the discretion of the Official State Agency, a sample of at least 500 birds, rather than all birds in the flock, may be tested by the State Inspector if it is agreed upon by the Official State Agency, the flockowner, and the Administrator.* * *

* * * * *

§ 145.21 [Amended]

8. Section 145.21 is amended by removing all paragraph designations and rearranging the definitions in alphabetical order.

9. Section 145.23 is amended as follows:

a. In the introductory text of paragraph (b)(3), the words ", or a breeding flock composed of progeny of a primary breeding flock which is intended solely for the production of multiplier breeding flocks," are removed.

b. Paragraph (b)(3)(v) is amended by removing the words "S. pullorum or S. gallinarum isolations from poultry" and adding the words "any disease outbreak involving a disease covered under the Plan" in their place, and by adding a proviso at the end of the paragraph to read as set forth below.

c. In paragraph (d), the paragraph heading and the first sentence of paragraph (d)(1)(i) are amended by removing the word "Sanitation" and adding the words "*S. enteritidis*" in its place.

d. In paragraph (d)(1)(v), the first sentence is amended by removing the words "more than 4 months" and replacing them with the words "2 to 4 weeks".

e. Paragraphs (d)(1)(vi), (d)(1)(vii), and (d)(1)(viii) are redesignated as paragraphs (d)(1)(vii), (d)(1)(viii), and (d)(1)(ix), respectively, and a new paragraph (d)(1)(vi) is added to read as set forth below.

f. In newly redesignated paragraph (d)(1)(vii), the first sentence is amended by removing the word "birds" and replacing it with the words "non-vaccinated birds as described in paragraph (d)(1)(vi) of this section".

g. In paragraph (d)(2), the second and third sentences are revised to read as set forth below.

h. Paragraph (d)(3) is amended by removing the words "A flock" and adding the words "A non-vaccinated flock" in their place; by removing the reference "(d)(v)" and adding the reference "(d)(1)(v)" in its place; and by removing the reference "(d)(1)(vi)" and adding the reference "(d)(1)(vii)" in its place.

i. Paragraphs (e)(1)(ii) (*a*) and (*b*) are redesignated as paragraphs (e)(1)(ii) (A) and (B).

§ 145.23 Terminology and classification: flocks and products.

* * * * *

(b) * * *

(3) * * *

(v) * * * *Provided,* That if the origin of the infection involves another State, or if there is exposure to poultry in another State from the infected flock, then the National Poultry Improvement Plan will conduct an investigation;

* * * * *

(d) * * *

(1) * * *

(vi) A federally licensed *Salmonella enteritidis* bacterin may be used in multiplier breeding flocks that are negative for *Salmonella enteritidis* upon bacteriological examination as described in paragraph (d)(1)(v) of this section: Provided, that a sample of 350 birds, which will be banded for identification, shall remain unvaccinated until the flock reaches at least 4 months of age. Following negative serological and bacteriological examinations as described in paragraph (d)(1)(vii) of this section, the banded, non-vaccinated birds shall be vaccinated.

* * * * *

(2) * * * Isolation of SE from an environmental or other specimen, as described in paragraph (d)(1)(v) of this section, will require bacteriological

examination for SE in an authorized laboratory, as described in § 147.11(a) of this chapter, of a random sample of 60 live birds from a flock of 5,000 birds or more, or 30 live birds from a flock with fewer than 5,000 birds. If only one specimen is found positive for SE, the participant may request bacteriological examination of a second sample, equal in size to the first sample, from the flock. * * *

* * * * *

§ 145.31 [Amended]

10. Section 145.31 is amended by removing all paragraph designations and rearranging the definitions in alphabetical order.

11. Section 145.33 is amended as follows:

a. The introductory text of paragraph (b)(3) is amended by removing the words ", or a breeding flock composed of progeny of a primary breeding flock which is intended solely for the production of multiplier breeding flocks,".

b. Paragraph (b)(3)(v) is amended by removing the words "S. pullorum or S. gallinarum isolations from poultry" and adding the words "any disease outbreak involving a disease covered under the Plan" in their place, and by adding a proviso at the end of the paragraph to read as set forth below.

c. In paragraph (d)(1)(viii), footnote 4a and its reference in the text are redesignated as footnote 4.

d. Paragraphs (e)(1)(ii) (*a*) and (*b*) are redesignated as paragraphs (e)(1)(ii) (A) and (B).

§ 145.33 Terminology and classification: flocks and products.

* * * * *

(b) * * *

(3) * * *

(v) * * * Provided, That if the origin of the infection involves another State, or if there is exposure to poultry in another State from the infected flock, then the National Poultry Improvement Plan will conduct an investigation;

* * * * *

§ 145.41 [Amended]

12. In § 145.41, the paragraph designation "(a)" assigned to the definition of the term *poults* is removed.

13. Section 145.43 is amended as follows:

a. Paragraph (b)(3)(v) is amended by removing the words "S. pullorum or S. gallinarum isolations from poultry" and adding the words "any disease outbreak involving a disease covered under the Plan" in their place, and by adding a proviso at the end of the paragraph to read as set forth below.

b. In paragraph (f)(3)(ii), the words "Industry/Education *Salmonella* Reduction" are removed and the words "Industry (APPI) *Salmonella* Education/Reduction" added in their place, and the footnote reference "4" is removed.

§ 145.43 Terminology and classification; flocks and products.

* * * * *

(b) * * *

(3) * * *

(v) * * * Provided, That if the origin of the infection involves another State, or if there is exposure to poultry in another State from the infected flock, then the National Poultry Improvement Plan will conduct an investigation;

* * * * *

§ 145.51 [Amended]

14. Section 145.51 is amended by removing all paragraph designations and rearranging the definitions in alphabetical order.

15. Section 145.53 is amended as follows:

a. In paragraph (a), footnote 1 and its reference in the text are redesignated as footnote 7.

b. The introductory text of paragraph (b)(3) is amended by removing the words ", or a breeding flock composed of progeny of a primary breeding flock which is intended solely for the production of multiplier breeding flocks,".

c. Paragraph (b)(3)(v) is amended by removing the words "S. pullorum or S. gallinarum isolations from poultry" and adding the words "any disease outbreak involving a disease covered under the Plan" in their place, and by adding a proviso at the end of the paragraph to read as set forth below.

§ 145.53 Terminology and classification: flocks and products.

* * * * *

(b) * * *

(3) * * *

(v) * * * Provided, That if the origin of the infection involves another State, or if there is exposure to poultry in another State from the infected flock, then the National Poultry Improvement Plan will conduct an investigation;

* * * * *

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

16. The authority citation for part 147 continues to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 147.1, 147.2, and 147.3 [Amended]

17. In §§ 147.1, 147.2, and 147.3, at the end of the regulatory text of each section, the words "(Approved by the Office of Management and Budget under control number 0579–0007)" are added.

§ 147.5 [Amended]

18. In § 147.5, paragraph (b), footnote 1 and its reference in the text are redesignated as footnote 4, and the footnote is amended by removing the words "Federal Building," and adding the words "Presidential Building, 6525 Belcrest Road," in their place.

19. In § 147.5, at the end of the regulatory text, the words "(Approved by the Office of Management and Budget under control number 0579–0007)" are added.

§ 147.6 [Amended]

20. In § 147.6, the introductory text of paragraph (b), the second sentence, the words "or identified as infected by a polymerase chain reaction (PCR)-based procedure approved by the Department" are added after the word "bacteriologically".

21. In § 147.6, paragraph (b)(5), the second sentence, the words "or a PCR-based procedure conducted on these specimens" are added after the word "individually".

22. In § 147.6, in paragraphs (b)(12) through (b)(15), the words ", PCR-based procedures," are added after the words "in vivo bio-assay" each time they appear.

23. Section 147.7 is amended as follows:

a. In the section heading, footnote 1 and its reference are redesignated as footnote 5.

b. In the introductory text, the first sentence is amended by removing the words "plate of the tube agglutination" and adding the words "plate agglutination test, the tube agglutination test, and the enzyme-linked immunosorbent assay (ELISA)" in their place.

c. In the introductory text, the beginning of the third sentence is amended by removing the word "Both" and adding the words "These three" in its place.

d. In the introductory text, the seventh sentence is amended by removing the words "the plate and/or" and adding the words "the ELISA, plate, and/or" in their place.

e. In paragraph (a), the paragraph heading and the first sentence of the introductory text of paragraph (a)(1) is amended by removing the words "plate test" and adding the words "plate agglutination test" in their place.

f. Paragraph (e) is amended as follows:

i. In the paragraph heading, the word "test" is removed and the word "tests" added in its place.

ii. Paragraphs (e)(1) introductory text through (e)(3)(xi) are redesignated as follows:

Old section	New section
147.7(e)(1) introductory text.	147.7(e)(1)(i) introductory text.
147.7(e)(1)(i)	147.7(e)(1)(i)(A).
147.7(e)(1)(ii)	147.7(e)(1)(i)(B).
147.7(e)(1)(iii)	147.7(e)(1)(i)(C).
147.7(e)(1)(iv)	147.7(e)(1)(i)(D).
147.7(e)(2) introductory text.	147.7(e)(1)(ii) introductory text.
147.7(e)(2)(i)	147.7(e)(1)(ii)(A).
147.7(e)(2)(ii)	147.7(e)(1)(ii)(B).
147.7(e)(2)(iii)	147.7(e)(1)(ii)(C).
147.7(e)(2)(iv)	147.7(e)(1)(ii)(D).
147.7(e)(2)(v)	147.7(e)(1)(ii)(E).
147.7(e)(2)(vi)	147.7(e)(1)(ii)(F).
147.7(e)(2)(vii)	147.7(e)(1)(ii)(G).
147.7(e)(2)(viii)	147.7(e)(1)(ii)(H).
147.7(e)(3) introductory text.	147.7(e)(1)(iii) introductory text.
147.7(e)(3)(i)	147.7(e)(1)(iii)(A).
147.7(e)(3)(ii)	147.7(e)(1)(iii)(B).
147.7(e)(3)(iii)	147.7(e)(1)(iii)(C).
147.7(e)(3)(iv)	147.7(e)(1)(iii)(D).
147.7(e)(3)(v)	147.7(e)(1)(iii)(E).
147.7(e)(3)(vi)	147.7(e)(1)(iii)(F).
147.7(e)(3)(vii)	147.7(e)(1)(iii)(G).
147.7(e)(3)(viii)	147.7(e)(1)(iii)(H).
147.7(e)(3)(ix)	147.7(e)(1)(iii)(I).
147.7(e)(3)(x) introductory text.	147.7(e)(1)(iii)(J) introductory text.
147.7(e)(3)(x)(A)	147.7(e)(1)(iii)(J)(*1*).
147.7(e)(3)(x)(B)	147.7(e)(1)(iii)(J)(*2*).
147.7(e)(3)(x)(C)	147.7(e)(1)(iii)(J)(*3*).
147.7(e)(3)(x)(D)	147.7(e)(1)(iii)(J)(*4*).
147.7(e)(3)(x)(E)	147.7(e)(1)(iii)(J)(*5*).
147.7(e)(3)(x)(F)	147.7(e)(1)(iii)(J)(*6*).
147.7(e)(3)(x)(G)	147.7(e)(1)(iii)(J)(*7*).
147.7(e)(3)(x)(H)	147.7(e)(1)(iii)(J)(*8*).
147.7(e)(3)(x)(I)	147.7(e)(1)(iii)(J)(*9*).
147.7(e)(3)(xi)	147.7(e)(1)(iii)(K).

iii. The introductory text of paragraph (e) is redesignated as paragraph (e)(1) and a new paragraph heading for paragraph (e)(1) is added to read as set forth below.

iv. A new paragraph (e)(2) is added to read as set forth below.

§ 147.7 Standard test procedures for mycoplasma.[5]

* * * * *

(e) * * *

(1) *Procedure No. 1.* * * *

* * * * *

(2) *Procedure No. 2.* Purpose: To test for antibodies to avian mycoplasma by hemagglutination inhibition (HI). The test uses the constant antigen, titered-sera method for measuring antibodies to *M. gallisepticum*, *M. synoviae*, or *M. meleagridis*.

(i) *Materials needed.*

(A) *M. gallisepticum*, *M. synoviae*, and/or *M. meleagridis* HI antigens.

(B) Positive and negative control sera.

(C) Phosphate buffered saline (PBS).

(D) Microtiter plates, 96-well, U-bottom.

(E) 12-channel pipettor (Titerek).

(F) 50 µL pipettor (Pipetman P200).

(G) Pipette tips.

(H) 0.5 percent homologous red blood cells (RBC's) in PBS (use RBC's from the same species being tested).

(I) Plate-sealing tape.

(J) Mirrored plate reader.

(ii) *Microtiter hemagglutination antigen (HA) titration.*

(A) Perform standard hemagglutination test (HA) on mycoplasma antigen to determine titer of antigen.

(*1*) Dispense 50 µL of PBS into each well of 3 rows of a 96-well microtiter plate.

(*2*) Dispense 50 µL of stock antigen into the wells of 2 rows.

(*3*) Perform serial two-fold dilutions (50 µL) using a 12-channel pipettor. The dilution series will be from 1:2 to 1:4096.

(*4*) Add 50 µL of 0.5 percent homologous RBC's to each well of all 3 rows. The row with no antigen serves as an RBC control.

(B) Incubate at room temperature (approximately 30 minutes) until the control RBC's give tight buttons. The HA titer is read as the last well to give a complete lawn (hemagglutination). The desired endpoint is 4 HA units. The well containing the 1:4 dilution should give a complete HA while the 1:8 dilution should show less than complete HA.

(C) Dilute stock antigen to 4 HA units for the HI test. The dilution required to give 4 HA units is calculated by dividing the stock antigen HA titer by 8. (Example: 1:320 HA units ÷ 8 = 40, dilute stock antigen 1:40.)

(iii) *Hemagglutination inhibition assay.*

(A) Label one column (A to H) of a 96-well, U-bottom microtiter plate for each sample, each positive and negative control sera, antigen backtitration, and RBC control.

(B) Add 40 µL of PBS to the top row of wells (row A) of the plate.

(C) Add 25 µL of PBS to all remaining wells of the plate.

(D) Add 10 µL of each test sera to well A of each column (making a 1:5 sera dilution).

(E) Serially dilute 25 µL from well A through H using a 12-channel pipettor. Discard the final 25 µL. Row A = 1:5...row H = 1:640.

(F) With an Oxford doser, add 25 µL of 4 HA unit antigen to wells B through H. Well A serves as sera control.

(G) Prepare an antigen backtitration by adding 25 µL of PBS to each well of one column. Add 25 µL of diluted antigen to well A and serially dilute 25 µL from wells A to D. This prepares 1:2, 1:4, 1:8, and 1:16 dilutions. (It is recommended that the antigen control backtitration be performed before the diluted antigen is used in the assay. Dilution problems could be detected and corrected before the inappropriately diluted antigen is used in the assay.)

(H) Leave a column of wells blank for an RBC control.

(I) Agitate gently and incubate for 30 minutes at room temperature.

(J) Add 50 µL of 0.5 percent RBC's to all wells. Note: Do not agitate after RBC's have been added (agitation may result in false positive reactions by causing the RBC's to fall, resulting in "false" buttons).

(K) Cover the plate with sealing tape. Incubate at room temperature for 30 minutes or until control RBC's give a tight button.

(L) Read the reaction on a mirrored plate reader.

(iv) *Results.*

(A) The titer is reported as the reciprocal of the last dilution to give a tight button of RBC's. The final dilution scheme includes the antigen in the dilution calculation and is as follows: B=1:20, C=1:40, D=1:80, E=1:160, F=1:320, G=1:640, H=1:1,280.

(B) For the assay to be valid:

(*1*) The positive control sera must give a result within one dilution of the previously determined titer.

(*2*) The negative control sera must be negative.

(*3*) The backtitration of the antigen must be 1:4 or 1:8.

(*4*) The RBC control must give tight, non-hemolyzed buttons.

(*5*) Sera controls (well A of each test sera) must not have non-specific agglutination or hemolysis. If negative, report as "negative with non-specific agglutination or non-specific hemolysis" or "unable to evaluate due to non-specific agglutination or hemolysis" or treat the serum to remove the non-specific agglutination and repeat the test. (See paragraph (e)(2)(v) of this section.)

(v) *Treatment to remove non-specific agglutination.*

(A) *Purpose.* Treatment of serum to remove non-specific agglutination that is interfering with HI assays.

(B) *Specimen.* Serum.

(C) *Materials.* Homologous RBC's (chicken or turkey), 50 percent solution

[5] For additional information on mycoplasma test procedures, refer to the following references: Proc. 77th Annual Meeting, U.S. Animal Health Association, 1973; Isolation and Identification of Avian Pathogens, 2nd Edition; Methods for Examining Poultry Biologics and for Identifying and Quantifying Avian Pathogens, 1971.

PBS, centrifuge, incubator, 4C (refrigerator).

(D) *Procedure.* (*1*) Prepare a 1:5 dilution of test serum by adding 50 µL of serum to 200 µL of PBS.

(*2*) Prepare a 50 percent solution of RBC's by adding equal volumes of packed RBC's to PBS. Mix well.

(*3*) Add 25 µL of 50 percent RBC solution to the serum dilutions.

(*4*) Vortex gently to mix.

(*5*) Incubate at 4 °C for 1 hour.

(*6*) Centrifuge to pellet the RBC's.

(*7*) Use the supernatant to perform the HI assay. Modify the dilution scheme in the assay to consider the initial 1:5 dilution prepared in the treatment. For the 1:5 dilution scheme, do not add PBS to row A. Add 50 µL of the 1:5 treated supernatant to row A. Serially dilute 25 µL from rows A through H. This prepares a serum dilution of 1:10 through 1:640 in rows B through H.

24. In part 147, "Subpart B—Bacteriological Examination Procedure," a new § 147.10 is added to read as follows:

§ 147.10 Laboratory procedure recommended for the bacteriological examination of egg-type breeding flocks with salmonella enteritidis positive environments.

Birds selected for bacteriological examination from egg-type breeding flocks positive for *Salmonella enteritidis* after environmental monitoring should be examined as described in § 147.11(a) of this subpart, with the following exceptions and modifications allowed due to the high number of birds required for examination:

(a) Except when visibly pathological tissues are present, direct culture, § 147.11(a)(1) of this subpart, may be omitted; and

(b) Enrichment culture of organ (non-intestinal) tissues using a non- selective broth, § 147.11(a)(2) of this subpart, may be omitted.

25. Section 147.11 is amended as follows:

a. Footnotes 1 through 4 and their references in the regulatory text are redesignated as footnotes 7 through 10.

b. Paragraphs (a) through (j) are redesignated as follows:

Old section	New section
147.11(a)	147.11(b)(1).
147.11(b) introductory text.	147.11(b)(2) introductory tex.t
147.11(b)(1)	147.11(b)(2)(i).
147.11(b)(2)	147.11(b)(2)(ii).
147.11(b)(3)	147.11(b)(2)(iii).
147.11(b)(4)	147.11(b)(2)(iv).
147 11(b)(5)	147.11(b)(2)(v).
147 11(c) introductory text.	147.11(b)(3) introductory text.
147.11(c)(1)	147.11(b)(3)(i).
147.11(c)(2)	147.11(b)(3)(ii).
147.11(c)(3)	147.11(b)(3)(iii).
147.11(c)(4)	147.11(b)(3)(iv).
147.11(c)(5)	147.11(b)(3)(v).
147.11(c)(6)	147.11(b)(3)(vi).
147.11(d)	147.11(b)(4).
147.11(e)	147.11(b)(5).
147.11(f)	147.11(b)(6).
147.11(g)	147.11(b)(7).
147.11(h)	147.11(b)(8).
147.11(i)	147.11(b)(9).
147.11(j)	147.11(b)(10).

c. A new paragraph (a) and a paragraph heading for paragraph (b) are added to read as set forth below.

d. At the end of the regulatory text of the section, the words "(Approved by the Office of Management and Budget under control number 0579– 0007)" are added.

§ 147.11 Laboratory procedure recommended for the bacteriological examination of salmonella.

(a) *For egg- and meat-type chickens, waterfowl, exhibition poultry, and game birds.* All reactors to the Pullorum-Typhoid tests, up to at least four birds, should be cultured in accordance with both *direct* (paragraph (a)(1)) and *selective enrichment* (paragraph (a)(2)) procedures described in this section. Careful aseptic technique should be used when collecting all tissue samples.

(1) Direct culture (refer to illustration 1). Grossly normal or diseased liver, heart, pericardial sac, spleen, lung, kidney, peritoneum, gallbladder, oviduct, misshapen ova or testes, inflamed or unabsorbed yolk sac, and other visibly pathological tissues where purulent, necrotic, or proliferative lesions are seen (including cysts, abscesses, hypopyon, and inflamed serosal surfaces), should be sampled for direct culture using either flamed wire loops or sterile swabs. Since some strains may not dependably survive and grow in certain selective media, inoculate *non-selective plates* in addition to two selective plating media. Refer to illustration 1 for recommended bacteriological recovery and identification procedures.[6] Proceed immediately with collection of organs and tissues for selective enrichment culture.

(2) Selective enrichment culture (refer to illustration 2). Collect and culture organ samples separately from intestinal samples, with intestinal tissues collected last to prevent cross-contamination. Samples from the following organs or sites should be collected for culture in selective enrichment broth. A non-selective broth culture (illustration 1) of pooled organs and sites should also be included as described in paragraph (a)(3) of this section.

(i) Heart (apex, pericardial sac, and contents if present);

(ii) Liver (portions exhibiting lesions or, in grossly normal organs, the drained gallbladder and adjacent liver tissues);

(iii) Ovary-Testes (entire inactive ovary or testes, but if ovary is active, include any atypical ova);

(iv) Oviduct (if active, include any debris and dehydrated ova);

(v) Kidneys and spleen; and

(vi) Other visible pathological sites where purulent, necrotic, or proliferative lesions are seen.

(3) From each reactor, aseptically collect 10 to 15 g, or the nearest lesser amount available, from each organ or site listed in paragraph (a)(2) of this section and mince, grind, and blend them completely in 10 times their volume of beef extract broth or a comparable non-selective broth. Organs or sites listed in paragraph (a)(2) of this section may be pooled from the same individual bird. Suspensions should be transferred in 10-ml aliquots to 100 ml of both tetrathionate brilliant green (TBG) (Hajna or Mueller-Kauffmann) broth and a separate non-selective broth and incubated at 37 °C for 24 hours. Refer to illustration 2 for recommended bacteriological recovery and identification procedures, including delayed secondary enrichment and combinations of plating media that significantly suppress the overgrowth of contaminants, such as brilliant green Novobiocin (BGN) and Xylose-Lysine-Tergitol 4 (XLT4).

(4) From each reactor, make a composite sample of the following parts of grossly normal or diseased tissues from the digestive tract: Crop wall, duodenum (including portions of the pancreas), jejunum (including remnant of yolk-sac attachment), both ceca, cecal tonsils, and rectum-cloaca. Aseptically collect 10–15 g or the nearest lesser amount available from each specified digestive or intestinal tissue, and mince, grind, and blend them completely in 10 times their volume of TBG broth. The digestive/intestinal tissues may be pooled from the same individual bird. Do not pool tissues from different birds. Transfer 10 ml of the described digestive TBG suspensions into 100 ml of TBG broth, and incubate at 41.5 °C for 24 hours. Cultures may be incubated at 37 °C if 41.5 °C incubators are not

[6] Biochemical identification charts may be obtained from "A Laboratory Manual for the Isolation and Identification of Avian Pathogens," chapter 1, Salmonellosis. Third edition, 1989, American Association of Avian Pathologists, Inc., Kendall/Hunt Publishing Co., Dubuque, IA 52004–0539.

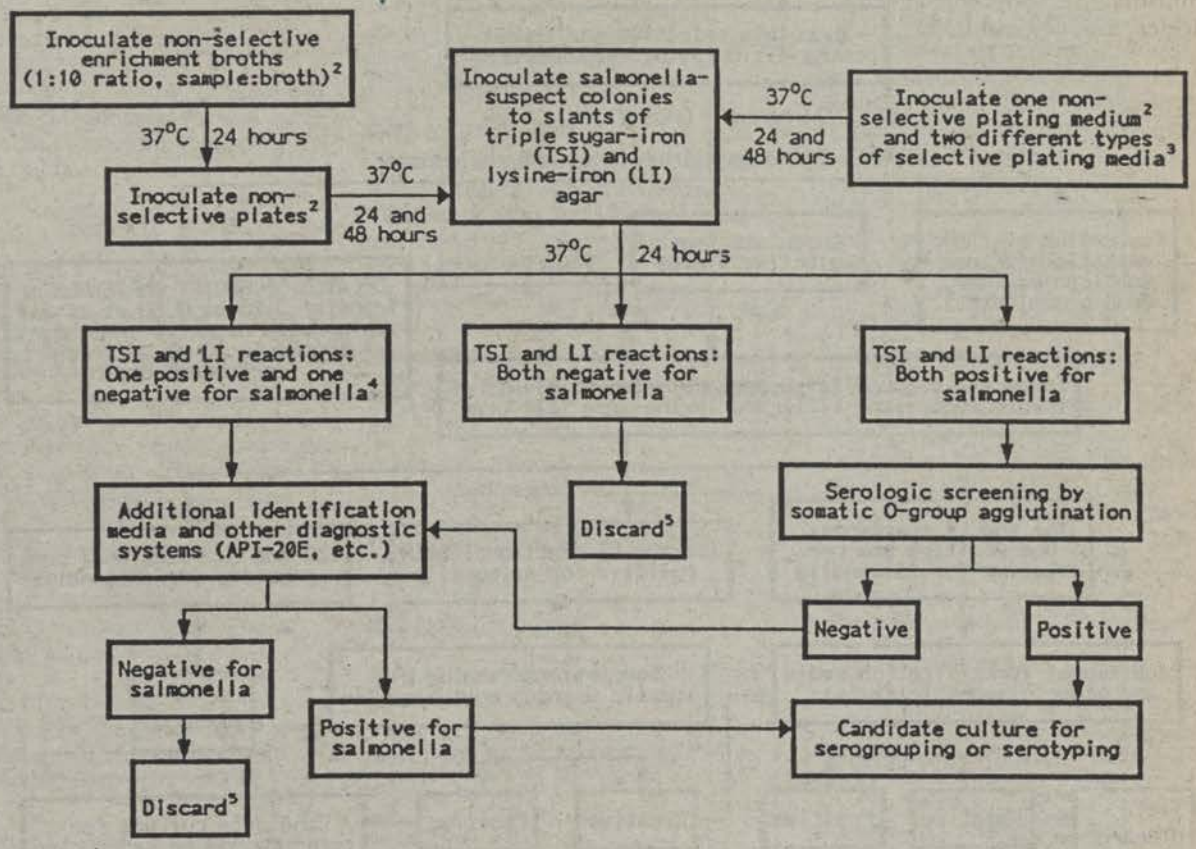
available. The higher incubation temperatures for TBG broth reduce populations of competitive contaminants common in gut tissue. Refer to illustration 2 for recommended bacteriological recovery and identification procedures, including delayed secondary enrichment and combinations of plating media that significantly suppress the overgrowth of contaminants, such as BGN and XLT4.

(5) A system such as the Analytical Profile Index for Enterobacteriaceae (API) may be utilized to aid cultural identifications.

(6) All isolates culturally identified as *salmonellae* should be serogrouped or serotyped.

BILLING CODE 3410-34-P

ILLUSTRATION 1: *Organ (non-intestinal) tissues.*[1]
Pullorum-Typhoid reactors.



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[1] All pullorum-typhoid reactors should also be evaluated with selective enrichment broths (refer to illustration 2).

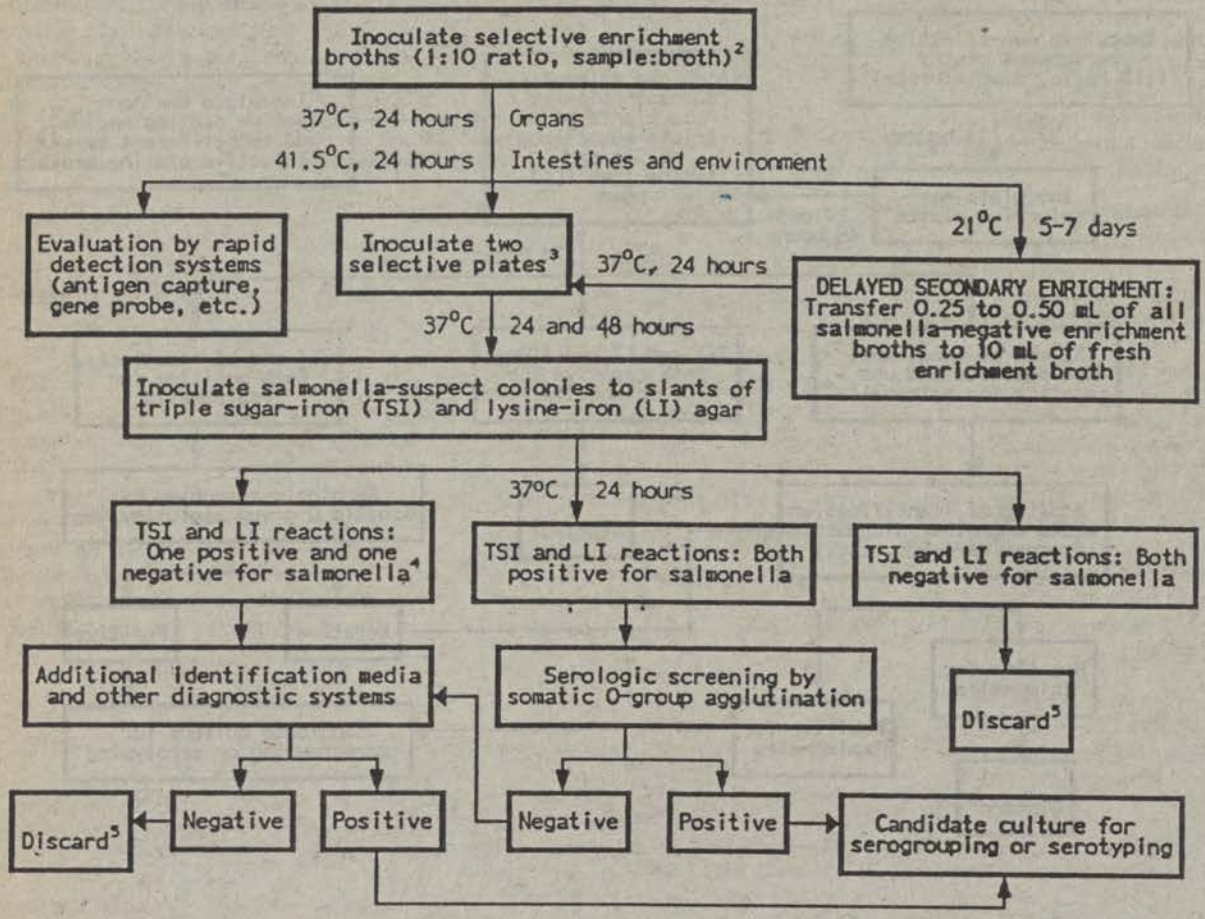
[2] Beef extract or infusion broths and plates are preferred. Comparable non-selective media may also be used.

[3] Inoculate brilliant green (BG) or BG-Novobiocin (BGN) AND another selective media such as xylose-lysine-desoxycholate (XLD) or XLD-Novobiocin (XLDN).

[4] If combined results with TSI and LI agars, additional identification media, and O-group screening procedures are inconclusive, restreak original colony onto selective plating media to check for purity.

[5] Reevaluate if epidemiologic, necropsy, or other information indicates the presence of an unusual strain of Salmonella.

ILLUSTRATION 2: *Environmental, organ, and intestinal samples.*[1] *Environmental monitoring programs and pullorum-typhoid reactors.*



[1] Organ issues from all reactor birds should also be evaluated without selective enrichment (refer to illustration 1).

[2] Hajna TT or Mueller-Kauffmann tetrathionate enrichment broth is preferred over selenites.

[3] For enrichment broths of organ samples, inoculate xylose-lysine-desoxycholate (XLD) or XLD-Novobiocin (XLDN) and brilliant green (BG) or BG-Novobiocin (BGN) media. One of the media shall be either XLDN or BGN. For enrichment broths of intestinal or environmental samples, inoculate xylose-lysine-tergitol 4 (XLT4) or XLDN and BGN or BG media.

[4] If combined results with TSI and LI agars, additional identification media, and O-group screening procedures are inconclusive, restreak original colony onto selective plating agar to check for purity.

[5] Reevaluate if epidemiologic, necropsy, or other information indicates the presence of an unusual strain of Salmonella.

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(b) *For turkeys.* * * *

* * * * *

§ 147.12 [Amended]

26. In § 147.12, paragraph (c)(2), footnote 1 and its reference in the text are redesignated as footnote 11.

27. In § 147.12, at the end of the regulatory text, the words "(Approved by the Office of Management and Budget under control number 0579–0007)" are added.

§ 147.13 [Amended]

28. In § 147.13, at the end of the regulatory text, the words "(Approved by the Office of Management and Budget under control number 0579–0007)" are added.

29. Section 147.14 is amended as follows:

a. In the section heading, footnote 1 and its reference are redesignated as footnote 12; the reference is removed from the section heading and added to the introductory text of § 147.14, immediately after the word "procedures"; and the text of newly redesignated footnote 12 is amended by removing the designations "(a)" and "(b)" and by adding a comma after "1980".

b. In the introductory text of paragraph (a)(2), the second sentence is revised and paragraphs (a)(2)(i) and (a)(2)(ii) added to read as set forth below.

§ 147.14 Procedures to determine status and effectiveness of sanitation monitored programs.

* * * * *

(a) * * *

(2) * * * Such eggs should also be cultured for the dependable recovery of *salmonellae*. Culturing for the dependable recovery of *salmonellae* should include the use of:

(i) Preenrichment broths supplemented with 35 mg ferrous sulfate per 1,000 ml preenrichment to block iron-binding, *Salmonella*-inhibiting effects of egg conalbumin; and

(ii) Tetrathionate selective enrichment broths, competitor-controlling plating media (XLT4, BGN, etc.), and delayed secondary enrichment procedures detailed in illustration 2 of § 147.11(a) of this part.

§§ 147.15 and 147.16 [Amended]

30. In §§ 147.15 and 147.16, footnotes 4 through 12 and their references in the regulatory text are redesignated as footnotes 13 through 21, respectively.

§ 147.21 [Amended]

31. In § 147.21, at the end of the regulatory text, the words "(Approved by the Office of Management and Budget under control number 0579–0007)" are added.

§ 147.41 [Amended]

32. Section 147.41 is amended by removing all paragraph designations and rearranging the definitions in alphabetical order.

§ 147.43 [Amended]

33. In § 147.43, in the introductory text of paragraph (a), the words "Transportation Services" are removed and the words "Inspection Services" added in their place.

Done in Washington, DC, this 11th day of March 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–6187 Filed 3–17–94; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 264b

[Docket No. R–0833]

Rules Regarding Foreign Gifts and Decorations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule

SUMMARY: Congress has permitted Federal government employees to accept from foreign governments gifts of travel or expense for travel taking place entirely outside of the United States of more than minimal value. The Board's Rules Regarding Foreign Gifts and Decorations provide that requests for Board approval of the acceptance of such expenses must be submitted to the Vice Chairman of the Board. The rules do not specify who should act upon such requests in the absence of the Vice Chairman, or in situations where the position of Vice Chairman is vacant. Accordingly, this rule will authorize the Board's Administrative Governor to act on requests for Board approval of these expenses when the Vice Chairman if unavailable.

EFFECTIVE DATE: March 18, 1994.

FOR FURTHER INFORMATION CONTACT: Cary Williams, Senior Attorney (202/452–3295, Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: In accordance with the authority provided in 5 U.S.C. 7342, the Board's Rules Regarding Foreign Gifts and Decorations currently state that requests for Board approval of the acceptance of travel or expenses for travel from a foreign government of more than minimal value must be submitted to the Vice Chairman. 12 CFR 264b.3(d) The rules are silent as to who is responsible for acting upon such requests in the Vice Chairman's absence. This rule will provide that the Board's Administrative Governor is authorized to approve these requests when the Vice Chairman is unavailable.

Regulatory Flexibility Act

This rule relates solely to the internal management, operations and personnel of the Board of Governors of the Federal Reserve Board, and no notice of proposed rulemaking is required by 5 U.S.C. 553. Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply and a regulatory flexibility analysis is not required.

List of Subjects in 12 CFR Part 264b

Decorations, medals, awards, Foreign relations, Government employees, Government Property.

For the reasons set out in the preamble, 12 CFR part 264b is amended as follows:

PART 265b—RULES REGARDING FOREIGN GIFTS AND DECORATIONS

1. The authority citation for part 264b continues to read as follows:

Authority: 5 U.S.C. 552, 7342 and 12 U.S.C. 248(i).

2. In § 264b.3 the last sentence in paragraph (d) is amended by removing the period at the end of the sentence and adding the phrase ", or, if the Vice Chairman is unavailable, to the Board's Administrative Governor." in its place.

By order of the Board of Governors of the Federal Reserve System, March 11, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–6220 Filed 3–17–94; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 93–198]

RIN 1550–AA58

Risk-Based Capital: Multifamily Housing Loans; Interest Rate Risk Component Delay of Effective Date

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule; delay of effective date.

SUMMARY: The Office of Thrift Supervision (OTS) is adopting a final rule that amends its risk-based capital regulation to give a 50 percent risk weight to qualifying multifamily mortgage loans and securities backed by such loans (mortgage-backed securities or MBS). The OTS is adopting this rule as part of an interagency initiative to implement the provisions of section 618(b) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 and section 305(b)(1)(B) of the Federal Deposit Insurance Corporation Improvement Act of 1991.

Multifamily mortgage loans that on the effective date of this rule qualified for the 50 percent risk-weight category under criteria in the OTS's previous capital rule and continue to satisfy those criteria will continue to be risk-weighted at 50 percent.

The OTS is also further delaying the effective date of a portion of its Interest Rate Risk final rule adopted on August 31, 1993 and making a conforming amendment to the rule.

EFFECTIVE DATES: This final rule is effective March 18, 1994, except that the first amendment to § 567.6(a)(1)(iii)(C) is effective on March 18, 1994 through September 29, 1994, and the second amendment to § 567.6(a)(1)(iii)(C) is effective September 30, 1994. The amendments to § 567.6 published at 58 FR 45813 (August 31, 1993) are delayed from July 1, 1994 to September 30, 1994.

FOR FURTHER INFORMATION CONTACT: John Connolly, Program Manager for Capital Policy, (202) 906–6465; Dorene Rosenthal, Senior Attorney, (202) 906–7268; John Flannery, Attorney, (202) 906–7293, Regulations, Legislation and Opinions Division; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Statutory Authority and Regulatory Background

The OTS today is issuing a final rule amending its risk-based capital treatment of multifamily mortgage loans. This rule conforms with the requirements of both section 618(b) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA) [1] and section 305(b)(1)(B) of Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA).[2]

Section 618(b)(1) of RTCRRIA requires the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of Comptroller of the Currency, and the OTS (collectively, "the federal banking agencies") to accord a 50 percent risk weight to multifamily mortgage loans and related MBS meeting certain specified criteria and gives the agencies discretion to add other prudential safeguards. Section 305(b)(1)(B) of FDICIA requires the federal banking agencies to revise their risk-based capital standards to ensure that those standards reflect the actual performance and expected risk of loss of multifamily mortgage loans.

Under the OTS's existing risk-based capital regulation, multifamily mortgage loans are assigned to the 50 percent risk-weight category if: They are secured by multifamily residential properties consisting of 5-to-36 dwelling units; they have an initial loan-to-value (LTV) ratio of not more than 80 percent; and an average annual occupancy rate of 80 percent or more of total units has existed for at least one year. While the criteria prescribed by RTCRRIA for qualifying multifamily mortgage loans overlap with OTS's existing criteria for these loans, they are not identical.

Section 618(b)(2) of RTCRRIA requires that any loan fully secured by a first lien on a multifamily residential property that is sold by a financial institution subject to a *pro rata* loss sharing arrangement be treated as a sale and not a recourse transaction, to the extent that the purchaser and not the seller is exposed to loss on that loan portion. In addition, section 618(b)(3) of RTCRRIA provides that the federal banking agencies must take into account loss sharing arrangements, other than *pro rata* arrangements, under their risk-based capital regulations. The statute requires the agencies to consider the extent to which loans fully secured by a first lien on a multifamily residential property subject to other than *pro rata* loss sharing arrangements should be treated as sold, but it does not require the agencies to afford such arrangements sales treatment.

The OTS's regulations already satisfy the requirements of sections 618(b)(2) and (3) of RTCRRIA. The OTS requires that savings associations follow generally accepted accounting principles (GAAP). Sales with recourse are recorded in accordance with Statement of Financial Accounting Standards (SFAS) No. 77 "Reporting by Transferors for Transfers of Receivables with Recourse."

Under the OTS's capital rule, in computing risk-based capital, the sale of a loan fully secured by a first lien on a multifamily residential property would be accorded sales treatment if each participant is responsible solely for its *pro rata* share of the risk, there is no recourse to the originating association on the portion of the loan for which the buyer is liable, and the transaction meets the requirements of SFAS No. 77.

In addition, the OTS's current risk-based capital regulation provides that savings associations must include in risk-weighted assets 100 percent of "the values of assets sold with recourse * * * except where the amount of recourse liability retained by the savings association is less than the capital requirement for credit-risk exposure." 12 CFR 567.6(a)(2)(i)(C). Thus, the capital charge of a selling institution on loans sold with recourse on either a *pro rata* or other than *pro rata* basis is limited to the institution's maximum contractual liability for losses on the loans sold, where the contractual liability is less than the capital requirement for the asset.

B. Description of the Proposal

On September 2, 1992, the OTS published a notice of proposed rulemaking containing an amendment to the definition of "qualifying multifamily mortgage loan" in its risk-based capital regulation. The proposed definition incorporated the criteria set forth in section 618(b)(1) of RTCRRIA and added other, prudent underwriting standards. 57 FR 40143 (September 2, 1992). The public comment period on the proposal closed on October 2, 1992.

Under the proposal, multifamily mortgage loans would qualify for the 50 percent risk-weight category if they satisfied the following statutory criteria: (1) The loan must be secured by a first lien on a residence consisting of 5 or more dwelling units; (2) the loan must amortize principal and interest over a period of not less than seven years and not more than 30 years; (3) all payments

[1] Pub. L. 102–233, 105 Stat. 1761 (1991).

[2] Pub. L. 102–242, 105 Stat. 2236 (1991).

of principal and interest must have been made on a timely basis in accordance with the terms of the loan for at least one year; and (4) if the rate of interest does not change over the term of the loan, then: (a) The LTV ratio at origination cannot exceed 80 percent, and (b) the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan cannot be less than 120 percent; or (5) if the loan has a variable rate, then: (a) The LTV ratio at origination cannot exceed 75 percent, and (b) the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan cannot be less than 115 percent.

The proposal also provided that multifamily mortgage loans must satisfy the following additional prudential criteria to qualify for the 50 percent risk-weight category: (1) The loan must be performing and not more than 90 days past due; (2) the loan must comply with applicable lending limit requirements and other prudent underwriting standards; and (3) the multifamily residential property securing the loan must have had an average annual occupancy rate of 80 percent or more total units for at least one year.

The final rule follows the approach set forth in the proposal with three modifications:[3] the occupancy rate requirement has been removed; LTV ratios will be calculated based on the ratio of the current loan balance to the value of the property; and multifamily loans that on the effective date of this rule qualified for a lower risk-weight category under the OTS's previous regulations but do not qualify under the amended rule will be grandfathered.

II. Summary of Comments and OTS Response

The OTS solicited public comment on all aspects of its proposed amendments to its risk-based capital regulation concerning multifamily mortgage loans and MBS secured by or representing an interest in such loans. The OTS received a total of 31 comment letters. Those who submitted comments included 20 savings associations, 9 thrift and housing trade groups, and 2 governmental-related entities. The discussion that follows identifies the principal issues raised in this rulemaking and summarizes the OTS's response to these issues.

A. Appropriate Risk-Weight Category

All of the commenters supported the proposal to amend the risk-based capital regulation, although several commenters suggested revisions. Generally, commenters believed it was appropriate to risk weight multifamily loans at 50 percent because of the lower risk presented by these loans as compared with other real estate and commercial loans. Commenters also indicated that this regulation would aid credit availability and cause more rental housing to become available because lenders would have greater incentives to originate multifamily mortgage loans due to the lower capital charge on such loans meeting the prudential criteria set forth in this rule.

As required by section 305 of FDICIA, the OTS has analyzed the loss data on multifamily mortgage loans for savings associations to determine the appropriate risk weight for such loans. The average annualized ratio of net charge-offs to the amount of outstanding permanent multifamily mortgage loans was 0.59 percent for the thirteen quarters beginning March 1990 and ending March 31, 1993, as reported on the quarterly Thrift Financial Reports. In contrast, the average annualized net charge-off rate over the same period was 0.11 percent for permanent 1–4 family residential mortgage loans, 1.17 percent for permanent nonresidential property loans, 1.19 percent for permanent commercial loans, 1.41 percent for multifamily construction loans, and 2.19 percent for commercial construction loans. The average annualized net charge-off rate over this period for all assets in the 100 percent risk-weight category was 0.83 percent.

The average net charge-off rates for these assets for the four quarters of 1992 were the following: 0.74 percent for permanent multifamily mortgage loans, 0.22 percent for permanent 1–4 family residential mortgage loans, 1.29 percent for nonresidential property loans, 1.37 percent for permanent commercial loans, 2.43 percent for multifamily construction loans, and 2.32 percent for commercial construction loans.

Although the net charge-off rate for permanent multifamily mortgage loans exceeded that for permanent 1–4 family residential loans, it was substantially below the net charge-off rates for the other types of loans specified above during the entire period reviewed. Permanent multifamily mortgage loans also had a net charge-off rate well below the average annualized aggregate net charge-off rate for 100 percent risk-weight assets for the twelve-month period.

Accordingly, the OTS believes that it is appropriate to accord a 50 percent risk weight to multifamily mortgage loans satisfying the conservative underwriting and performance standards set forth in section 618(b) of RTCRRIA and two of the three additional prudential criteria proposed by the federal banking agencies. The additional prudential criteria retained in the final rule are: (1) The loan must be performing and not 90 days or more past due; and (2) the loan must comply with prudent underwriting standards.

This final rule appropriately affords a reduced risk weight to loans whose future repayment prospects are such that they expose institutions to relatively low levels of credit risk. Multifamily mortgage loans not meeting the standards set forth in this rule may pose higher risk of loss and should be placed in the 100 percent risk-weight category. This final rule also satisfies the requirement of section 305 of FDICIA to ensure that multifamily mortgage loans are placed in an appropriate risk-weight category based on actual performance and potential risk of loss.

B. Criteria for Eligibility in the 50 Percent Risk-Weight Category

1. Number-Of-Units Restriction

The OTS's current risk-based capital regulation limits qualifying multifamily mortgage loans to properties with five to 36 units. The OTS requested comments on whether to retain this restriction. The majority of commenters urged the OTS not to impose a number-of-units restriction on the size of properties securing qualifying multifamily mortgage loans. Two commenters advocated retaining the number-of-units restriction, claiming that loans on smaller multifamily properties pose a lower risk of loss than larger projects. The OTS has considered these comments in light of the OTS's general experience with its current rule providing reduced risk weighting for multifamily mortgage loans on relatively small properties and believes they have some merit. Nevertheless, based on its data on the overall loss experience for multifamily mortgage loans regardless of size, and to conform with the uniform position adopted by the federal banking agencies, the OTS is not including a number-of-units restriction.

A few commenters advocated removing a number-of-units restriction in order to allow mortgage loans secured by manufactured housing properties to qualify for the 50 percent risk-weight

[3] Since the proposal was published, the OTS also has consulted with the other federal banking agencies about the issues raised in the comment letters received in response to their proposed rules. The OTS is today adopting a final rule that is consistent with the approaches agreed upon by staff of the other federal banking agencies.

category. The OTS wishes to clarify that its capital rules generally, and this provision in particular, apply the same standards and principles to manufactured housing as to other residential properties in determining the appropriate risk weight.

2. LTV Ratio

While a few commenters advocated calculating the LTV ratio at origination only, most commenters favored the agency's suggestions that the LTV ratio could be computed when there has been a loan paydown or a more recent appraisal. Several commenters cautioned the agency to control the frequency of new appraisals.

Upon review, the OTS has determined to calculate LTV ratios as a continuing criterion based on current loan balance to the value of the property. Prudent underwriting standards dictate that at origination of a loan to purchase a multifamily property, the value of the property is the lower of acquisition cost of the property or the initial appraised value, or, if appropriate, the value of the property as determined by the initial evaluation.[4] The OTS recognizes that the value of property can change over time based on factors such as changes in market conditions or material development of the property. Nothing in this rule prohibits the recomputation of the LTV ratio based on such changes and developments.

In cases not involving purchase of a multifamily property, the value of the property generally would be determined by the most current appraisal, or, if appropriate, the most current evaluation. All appraisals and evaluations must be made in a manner consistent with the OTS's real estate appraisal regulations, guidelines, and policies and with the institution's own appraisal policies. Loans that exceed the LTV ratios set forth in the regulation at origination will be permitted to qualify for the 50 percent risk weight when the loans are paid down below an 80 percent LTV ratio for fixed rate loans and a 75 percent LTV ratio for variable rate loans, if the other criteria set forth in this regulation are satisfied.

3. 80 Percent Occupancy Rate

The majority of commenters advocated removing the 80 percent occupancy-rate requirement. These commenters suggested that the requirement was unnecessary in light of the debt service, LTV ratio, and timely payments requirements. A few commenters also noted that occupancy rate may not accurately measure the income generated by a property. The OTS concludes that the debt service requirement is a more accurate measure of the income-producing capacity of the property than the occupancy-rate requirement and is eliminating the occupancy-rate requirement from the final rule.

4. Timely Payments Requirement

The proposal includes the requirement that loans receive timely payment of principal and interest for the year preceding its placement in the 50 percent risk-weight category. The OTS received many comments on the effect of the timely payments requirement on the willingness of institutions to make multifamily mortgage loans. Several commenters urged that, for other than new construction loans, lenders be permitted to look at the property's prior operating history to determine compliance with the timely payments requirement. This would allow loans on properties with a history of timely payments to qualify for the 50 percent risk-weight category at origination.

To clarify some misunderstanding of this criterion, the determination whether the timely payments requirement is met is made only once, at the time when the institution decides to place the multifamily mortgage loan in the 50 percent risk-weight category. "Timely payments" will generally be considered those payments not 30 days or more past due. The criteria that the loan be performing and not 90 days or more past due will be used to monitor the payment stream of the loan on an ongoing basis.

Upon review, the OTS has decided that, when a borrower refinances a loan on an existing property, as an alternative, the timely payments requirement may be satisfied if: (1) All principal and interest payments on the loan being refinanced have been made on a timely basis in accordance with the terms of that loan for the preceding year and (2) the net income on the property for the preceding year would support timely principal and interest payments on the new loan in accordance with the applicable debt service requirement.

5. Cooperative and Not-For-Profit Multifamily Mortgage Loans

Five commenters asked that a cooperative housing loan where the master mortgage is a joint obligation of the shareholders in the cooperative be treated as a qualifying multifamily mortgage loan under the rule. Certain cooperative and other not-for-profit multifamily housing properties, however, may not be able to generate sufficient income to satisfy the debt service ratio required by the rule. Therefore, the OTS will permit cooperatives and other not-for-profit multifamily properties to meet the debt service ratio requirement by generating sufficient cash flows to provide comparable protection to the institution. Debt service coverage providing comparable protection to the institution may take a number of different forms that include, but are not limited to, special operating reserves accounts or special operating subsidies provided by federal, state, local, or private sources.

6. Treatment of MBS

Some commenters agreed with the requirement in the proposal that, in order to qualify for a 50 percent risk weight, MBS must be secured by or represent an interest in qualifying multifamily mortgage loans at the time of securitization. Several commenters suggested that the final rule allow multifamily mortgage loans to be securitized immediately, and the MBS backed by such loans to qualify for the lower risk-weight category after the underlying mortgage loans have satisfied the timely payments requirement.

Upon review of this issue and consultation with the other federal banking agencies, the OTS has decided that it will generally expect MBS secured by or representing an interest in multifamily mortgage loans to qualify for the 50 percent risk-weight category at original securitization. Thus, all of the underlying multifamily mortgage loans must satisfy the qualifying criteria, including the timely payments requirement, at the time the MBS is securitized.

The MBS will remain in the 50 percent risk-weight category provided the investing institution receives timely payments (generally those payments not 30 days or more past due) of principal and interest in accordance with the terms of the MBS. However, institutions holding the multifamily MBS, or servicers or trustees on their behalf, will not be required to track the continuing qualification of the underlying mortgage loans.

Several commenters misunderstood the interaction of this provision regarding certain MBS with other provisions concerning MBS in the OTS's risk-based capital regulation. Today's rule only addresses privately issued, non-high-quality MBS backed by qualifying multifamily mortgage loans.

[4] For an explanation of the distinction between an appraisal and an evaluation of real estate and for a description of the circumstances under which each is required under the OTS's current rules, see 12 CFR Part 564. As part of an interagency initiative, however, the OTS is in the process of amending these appraisal regulations. See 58 FR 31878 (June 4, 1993) (proposed rule).

MBS backed by multifamily mortgage loans that are issued or guaranteed by a U.S. government sponsored enterprise; that are privately issued and rated in one of the two highest rating categories by at least one nationally recognized statistical rating service; and those with residual characteristics would be treated the same as MBS with the same characteristics backed by 1–4 family residential mortgage loans.

C. Grandfathering of Loans Currently Qualifying for the 50 Percent Risk-Weight Category

The majority of commenters favored the OTS's proposal to "grandfather" the risk-weighting of existing multifamily mortgage loans qualifying for the 50 percent risk-weight category under the OTS's prior regulation, but not qualifying under the new criteria. The other federal banking agencies are not presented with this issue since their existing capital rules do not provide a 50 percent risk-weight for any multifamily mortgage loans.

OTS's supervisory experience with multifamily mortgage loans qualifying for the 50 percent risk-weight category under its prior rule shows no reason to increase the capital charge on these loans to 100 percent. Associations that originated and administered these loans in accordance with the prudent criteria established by the OTS's prior rule should retain the benefit of the reduced capital charge. Therefore, the OTS has decided to "grandfather" any multifamily mortgage loans that, on the effective date of this rule, qualified for the 50 percent risk-weight category under the OTS's previous rule and that continue to meet those criteria. Any "grandfathered" multifamily mortgage loan that does not remain in compliance with the requirements of the prior rule may requalify for the 50 percent risk-weight category only by satisfying the criteria under today's rule.

Several commenters urged the OTS to retain its existing criteria or to adopt less stringent criteria for loans on multifamily properties with less than 36 units because such loans present less risk than loans on larger properties. The OTS has given serious consideration to this suggestion, but in the interest of interagency uniformity has determined not to provide a reduced risk weight to new loans qualifying under the prior OTS rule.

D. Recourse

One commenter suggested that the OTS clarify and amend the recourse provisions of its capital rule to recognize more subtle distinctions in risk. Upon consideration, the OTS has decided not to amend its recourse provisions as part of this rulemaking because the OTS and the other federal banking agencies are considering the treatment of loss sharing arrangements and related recourse issues as part of their comprehensive interagency review of recourse, initiated by the Federal Financial Institutions Examination Counsel (FFIEC). Under the FFIEC's initiative, the agencies are considering revisions to their risk-based capital standards to distinguish among loss sharing arrangements involving asset sales based on the degree of risk involved in the transaction.

III. Description of the Final Rule

Under today's final rule, multifamily mortgage loans qualify for the 50 percent risk-weight category if they satisfy the following criteria: (1) The loan must be secured by a first lien on a multifamily residential property consisting of 5 or more dwelling units; (2) the loan must amortize principal and interest over a period at origination of not less than seven years and not more than 30 years; (3) when the loan is considered for a lower risk-weight category, all principal and interest payments have been made on a timely basis in accordance with its terms for the preceding year; (4) the loan is performing and not 90 days or more past due; (5) the loan is made by the savings association in accordance with prudent underwriting standards; and (6) if the interest rate on the loan does not change over the term of the loan, then: (a) The current loan balance amount does not exceed 80 percent of the value of the property securing the loan; and (b) for the property's most recent fiscal year, the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan is not less than 120 percent, or in the case of cooperative or other not-for-profit housing projects, the property generates equivalent debt service coverage; or (7) if the loan has a variable rate, then: (a) The current loan balance amount does not exceed 75 percent of the value of the property securing the loan; and (b) for the property's most recent fiscal year, the ratio of net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan is not less than 115 percent, or in the case of cooperative or other not-for-profit housing projects, the property generates equivalent debt service coverage.

In addition, the final rule extends "grandfathered" treatment to those multifamily mortgage loans that on the effective date of this rule qualified for the 50 percent risk-weight category under the definition of "qualifying multifamily mortgage loan" in the OTS's previous capital rule and continue to satisfy the criteria of that definition, but do not satisfy all the criteria for inclusion in the 50 percent risk-weight category under today's rule. Any "grandfathered" multifamily mortgage loan that does not remain in compliance with the requirements of the prior rule may requalify for the 50 percent risk-weight category only by satisfying the criteria set forth in today's rule.

Under today's rule, a multifamily mortgage loan[5] must continue to meet the requisite criteria on an ongoing basis, unless otherwise specified, for the loan to remain in the 50 percent risk-weight category. A multifamily mortgage loan that does not remain in compliance with the requirements set forth in today's rule must be reassigned to the appropriate risk-weight category. The OTS notes that institutions may make multifamily mortgage loans that do not meet the criteria set forth in this rule so long as such loans conform with prudent underwriting standards. Such loans must be placed in the appropriate risk-weight category.

Furthermore, purchasers of multifamily mortgage loans may look to the borrower's payment history with the selling institution and the characteristics of the purchased loans to determine compliance with the timely payments requirement and other qualifying criteria under this rule. Likewise, institutions with multifamily mortgage loans in their portfolio that did not qualify for a lower risk-weight under the OTS's previous risk-based capital rule may review the borrower's prior payment history to determine compliance with this rule's criteria.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this rule will not have a significant economic impact on a substantial number of small entities. Loans on multifamily properties with a small number of units are already covered under the existing risk-based capital regulation and will continue to be covered under either the grandfathering provision or the new rule.

V. Executive Order 12866

The OTS has determined that this final rule does not constitute a "significant regulatory action."

[5] Multifamily mortgage loans include loans secured by property that is used for some commercial purposes so long as the property is primarily a multifamily residence.

VI. Effective Date

This final multifamily rule is effective upon publication in the **Federal Register** without the 30-day delay of effective date provided for in the Administrative Procedure Act, 5 U.S.C. 553. The delayed effective date requirement may be waived for "good cause." The OTS has determined that good cause exists to waive the delayed effective date requirement since the rule relieves a restriction on savings associations by permitting them to utilize a lower risk weight for eligible multifamily housing loans and securities collateralized by such loans in calculations of their risk-based capital ratios. This effective date will enable savings associations to use the reduced risk weight for multifamily housing loans in their Thrift Financial Report for the quarter ending March 31, 1994.

One of today's amendments affects a credit risk-weight category at section 567.6(a)(1)(iii)(C), a section also amended by Interest Rate Risk. 58 FR 45813 (August 31, 1993). The Interest Rate Risk amendments to 567.6 were originally to become effective on July 1, 1994, when a savings association would first have been required to deduct an interest rate risk component in calculating its risk-based capital requirement. To simplify reporting requirements, the agency is changing the effective date of those amendments to September 30, 1994. OTS is therefore publishing on an interim basis section 567.6(a)(1)(iii)(C) as it will be in effect from March 18, 1994 through September 29, 1994. This reflects today's multifamily amendment to this section, but not the change that the interest rate risk amendments will make to that section. Section 567.6(a)(1)(iii)(C) as it will be in effect on and after September 30, 1994 follows.

Finally, a conforming amendment is being made to section 567.7(a) to change the date the deduction of an institution's interest rate risk component becomes effective.

List of Subjects in 12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby amends part 567, subchapter D, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows.

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.1 is amended by revising paragraph (v) to read as follows:

§ 567.1 Definitions.

* * * * *

(v) *Qualifying multifamily mortgage loan.* (1) The term *qualifying multifamily mortgage loan* means a loan secured by a first lien on multifamily residential properties consisting of 5 or more dwelling units, provided that:

(i) The amortization of principal and interest occurs over a period of not more than 30 years;

(ii) The original minimum maturity for repayment of principal on the loan is not less than seven years;

(iii) When considering the loan for placement in a lower risk-weight category, all principal and interest payments have been made on a timely basis in accordance with its terms for the preceding year;

(iv) The loan is performing and not 90 days or more past due;

(v) The loan is made by the savings association in accordance with prudent underwriting standards; and

(vi) If the interest rate on the loan does not change over the term of the loan:

(A) The current loan balance amount does not exceed 80 percent of the value of the property securing the loan; and

(B) For the property's most recent fiscal year, the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan is not less than 120 percent, or in the case of cooperative or other not-for-profit housing projects, the property generates sufficient cash flows to provide comparable protection to the institution; or

(vii) If the interest rate on the loan changes over the term of the loan:

(A) The current loan balance amount does not exceed 75 percent of the value of the property securing the loan; and

(B) For the property's most recent fiscal year, the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan is not less than 115 percent, or in the case of cooperative or other not-for-profit housing projects, the property generates sufficient cash flows to provide comparable protection to the institution.

(2) The term *qualifying multifamily mortgage loan* also includes a multifamily mortgage loan that on March 18, 1994 was a first mortgage loan on an existing property consisting of 5–36 dwelling units with an initial loan-to-value ratio of not more than 80% where an average annual occupancy rate of 80% or more of total units had existed for at least one year, and continues to meet these criteria.

(3) For purposes of paragraphs (v)(1)(vi) to (vii) of this section, the term *value of the property* means, at origination of a loan to purchase a multifamily property: the lower of the purchase price or the amount of the initial appraisal, or if appropriate, the initial evaluation. In cases not involving purchase of a multifamily loan, the *value of the property* is determined by the most current appraisal, or if appropriate, the most current evaluation.

(4) In cases where a borrower refinances a loan on an existing property, as an alternative to paragraphs (v)(1)(iii) and (vi) to (vii) of this section:

(i) All principal and interest payments on the loan being refinanced have been made on a timely basis in accordance with the terms of that loan for the preceding year; and

(ii) The net income on the property for the preceding year would support timely principal and interest payments on the new loan in accordance with the applicable debt service requirement.

* * * * *

3. Section 567.6 is amended by revising paragraph (a)(1)(iii)(C) effective on March 18, 1994 through September 29, 1994, to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(1) * * *

(iii) * * *

(C) Non-high-quality mortgage-related securities secured by or representing an interest in qualifying mortgage loans and qualifying multifamily mortgage loans, except for those with residual characteristics or stripped mortgage-related securities. If the security is backed by qualifying multifamily mortgage loans, the institution must receive timely payments of principal and interest in accordance with the terms of the security. Payments will generally be considered timely if they are not 30 days or more past due.

* * * * *

4. Section 567.6 is amended by revising paragraph (a)(1)(iii)(C) effective September 30, 1994 to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(1) * * *

(iii) * * *

(C) Non-high-quality mortgage-related securities secured by or representing an

interest in qualifying mortgage loans and qualifying multifamily mortgage loans, except for collateralized mortgage obligation residual classes. If the security is backed by qualifying multifamily mortgage loans, the institution must receive timely payments of principal and interest in accordance with the terms of the security. Payments will generally be considered timely if they are not 30 days or more past due.

* * * * *

§ 567.7 [Amended]

5. Section 567.7 is amended by removing the word "first" in the fourth sentence of paragraph (a) and by adding in lieu thereof the word "last".

Dated: October 15, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–5452 Filed 3–17–94; 8:45 am]

BILLING CODE 6720–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB45

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under part 615 on January 27, 1994 (59 FR 3785). The final regulation amends 12 CFR part 615 to allow Farm Credit System institutions to document the existence of a first lien on the security for long-term real estate mortgage loans by obtaining title insurance or an attorney's certification. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 18, 1994.

EFFECTIVE DATE: The regulation amending 12 CFR part 615, published on January 27, 1994 (58 FR 3785) is effective March 18, 1994.

FOR FURTHER INFORMATION CONTACT: Laurie A. Rea, Policy Analyst, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

James M. Morris, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: March 15, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–6458 Filed 3–17–94; 8:45 am]

BILLING CODE 6705–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 124

Small Business Size Regulations; Minority Small Business and Capital Ownership Development

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The Small Business Administration amends its regulations governing the Minority Small Business and Capital Ownership Development program authorized by sections 7(j)(10) and 8(a) of the Small Business Act. Several statutory changes have been made affecting the 8(a) program that have not previously been incorporated in SBA's regulations. This final rule is needed to remove the inconsistencies that currently exist in SBA's regulations due to these statutory provisions, as well as a procedural inconsistency that currently exists between SBA's regulations and the Federal Acquisition Regulations.

EFFECTIVE DATE: April 18, 1994.

FOR FURTHER INFORMATION CONTACT: Judith A. Roussel, Office of Minority Small Business and Capital Ownership Development, (202) 205–6410.

SUPPLEMENTARY INFORMATION: On August 21, 1989, SBA published a final rule in the **Federal Register**, 54 FR 34692, amending its regulations with respect to the Minority Small Business and Capital Ownership Development program authorized by sections 7(j)(10) and 8(a) of the Small Business Act, 15 U.S.C. §§ 636(j)(10) and 637(a). That rule finalized SBA's implementation of the Business Opportunity Development Reform Act of 1988, Public Law 100–656, 102 Stat. 3853. SBA published technical amendments to this rule on August 27, 1990, 55 FR 34901. Several statutory changes have been made affecting the 8(a) program since these regulatory revisions and need to be incorporated into SBA's regulations. This final rule is needed to remove the inconsistencies that currently exist in SBA's regulations due to these statutory provisions.

Section 203 of the Small Business Administration Reauthorization and Amendments Act of 1990, Public Law 101–574, 104 Stat. 2818, statutorily amended SBA's requirement that an applicant concern be in business for two years in order for it to be eligible for Program Participation. That law authorizes SBA to establish a minimum time in business requirement only if a possible waiver of that requirement is also provided. SBA's regulation concerning the two-year in business requirement, contained in 13 CFR 124.107, needs to be amended to identify the criteria for a waiver to the two-year in business rule. Confusion among 8(a) applicants has arisen because this regulation has not yet been amended.

Public Law 101–574 also made three statutory changes, relating to participation in the 8(a) program by tribally-owned concerns, that need to be implemented in the regulations. The first of these changes overrides SBA's previous regulation concerning affiliation of tribally-owned concerns for size purposes. Section 204 of Public Law 101–574, 104 Stat. 2819, amended section 7(j)(10)(J)(ii) of the Small Business Act, 15 U.S.C. 636(j)(10)(J)(ii), to specify that, for purposes of the 8(a) program, the size of a tribally-owned concern generally shall be determined without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe. SBA's previous regulation permitted affiliation to be found with other tribally-owned entities based on one or more relationships other than common tribal ownership. This final rule incorporates the statutory language into SBA's regulations. The other two statutory changes pertain to 8(a) joint ventures between tribally-owned concerns and large businesses. Section 205 of Public Law 101–574, 104 Stat. 2819–20, increased the number of 8(a) joint ventures authorized between tribally-owned concerns and large businesses from two to five and extended, through September 30, 1994, the authorization for tribally-owned 8(a) concerns to enter joint ventures with large businesses. This final rule incorporates these changes into the regulations.

Additionally, Section 206 of Public Law 101–574, 104 Stat. 2820, extended SBA's surety bond waiver authority in section 7(j)(13)(D)(iii) of the Small Business Act, 15 U.S.C. 636(j)(13)(D)(iii), from October 1, 1992, to October 1, 1994. This final rule adds that statutory revision.