

# Rules and Regulations

Federal Register

Vol. 68, No. 182

Friday, September 19, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 82

[Docket No. 02–117–10]

#### Exotic Newcastle Disease; Removal of Areas From Quarantine

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the exotic Newcastle disease regulations by removing portions of Kern, Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties, CA, from the list of quarantined areas. This action removes restrictions on the movement of birds, poultry, and certain other articles from those areas. With this action, there are no longer any areas in the United States that are quarantined because of exotic Newcastle disease.

**DATES:** This interim rule was effective September 16, 2003. We will consider all comments that we receive on or before November 18, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–117–10, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–117–10. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and “Docket No. 02–117–10” on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Aida Boghossian, Senior Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

#### SUPPLEMENTARY INFORMATION:

##### Background

Exotic Newcastle disease (END) is a contagious and fatal viral disease affecting the respiratory, nervous, and digestive systems of birds and poultry. END is so virulent that many birds and poultry die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry.

The regulations in “Subpart A—Exotic Newcastle Disease (END)” (9 CFR 82.1 through 82.16, referred to below as the regulations) were established to prevent the spread of END in the United States in the event of an outbreak. In § 82.3, paragraph (a) provides that any area where birds or poultry infected with END are located will be designated as a quarantined area, and that a quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Prior to the effective date of this interim rule, portions of Kern, Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties, CA, were designated as quarantined areas in § 82.3(c) of the regulations. As a result, the interstate movement from those

quarantined areas of birds, poultry, products, and materials that could spread END was prohibited or restricted. Further, because the Secretary of Agriculture declared an extraordinary emergency because of END in California, the intrastate movement from the quarantined areas of birds, poultry, products, and materials that could spread END was prohibited or restricted, as provided by the regulations in § 82.16.

#### Previous Quarantine Actions

On October 1, 2002, END was confirmed in the State of California. The disease was confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption. Over the course of the following months, END was confirmed in backyard and commercial poultry on premises elsewhere in California and in backyard poultry in Arizona, Nevada, and Texas. Consequently, in a series of six interim rules published in the **Federal Register** between November 2002 and May 2003, we amended the regulations in § 82.3(c) by designating specific portions of each of those States as quarantined areas. As of May 2003, all or portions of three counties in Arizona, nine counties in California, two counties in Nevada, three counties in New Mexico, and two counties in Texas were designated as quarantined areas in § 82.3(c). As provided for by the regulations in § 82.3(a), these quarantined areas encompassed each area where poultry infected with END were located and a surrounding geographical area deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

#### Previous Reductions in Quarantined Areas

Beginning in May 2003, we began releasing areas from quarantine after Animal and Plant Health Inspection Service (APHIS) epidemiologists determined, based on the results of extensive investigations conducted in Arizona, California, Nevada, New Mexico, and Texas, that it was possible to reduce the size of the quarantined areas in those States. Specifically:

- In an interim rule effective May 14, 2003, and published in the **Federal Register** on May 19, 2003 (68 FR 26986–26988, Docket No. 02–117–6), we

reduced the size of the quarantined areas in Nevada and Arizona, leaving only portions of La Paz County, AZ, and Clark County, NV, as quarantined areas in those States.

- In an interim rule effective June 5, 2003, and published in the **Federal Register** on June 11, 2003 (68 FR 34779–34781, Docket No. 02–117–8), we reduced the size of the quarantined areas in Texas and eliminated the quarantined areas in New Mexico, leaving only a portion of El Paso County, TX, as a quarantined area in that State.

- In an interim rule effective July 30, 2003, and published in the **Federal Register** on August 4, 2003 (68 FR 45741–45745, Docket No. 02–117–9), we eliminated the last remaining quarantined areas in Arizona, Nevada, and Texas and reduced the size of the quarantined areas in California, leaving only portions of Kern, Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties, CA, as quarantined areas in that State.

#### *Additional Reductions in Quarantined Areas*

In this interim rule, we are eliminating the last remaining quarantined areas in California. The portion of Orange County that we are removing from quarantine is an area in which END has not been found, but which was included in the quarantined area due to its proximity to areas in adjoining counties where END-positive premises were found. Our actions with respect to Kern, Los Angeles, Riverside, San Bernardino, and Ventura Counties—areas that had, at one time, contained infected premises—are based upon our determination that the areas in those counties meet the criteria contained in § 82.14 of the regulations for release from quarantine. Our basis for these actions is discussed in greater detail below.

#### *Areas in Which END Has Not Been Found*

No END-positive premises were detected in Orange County, CA. Surveillance and testing of poultry premises was carried out in this area and resulted in no END-positive premises being detected.

**Noncommercial premises.** An inventory of at-risk noncommercial premises was developed for the areas targeted for quarantine release. In addition to information previously collected through eradication activities, sources of information included local animal control authorities, local law enforcement, county agricultural

officials, extension personnel, and animal welfare workers.

Surveillance efforts were concentrated in areas that had at-risk premises. An at-risk premises was defined as a premises inhabited by poultry or ratites or that contained an aviary. Within this population, premises considered highest risk were targeted for sampling. High risk premises were defined as any premises with any galliform birds (chickens, turkeys, pheasant, quail, partridge, guinea fowl, pea fowl, etc.), columbiform birds (pigeons, doves), or anseriform birds (ducks, geese, swans). Other factors considered indicative of high risk were multiple owners on the same premises, premises with sick or dead birds, history of movement of birds, and possible contact with an infected premises.

The sampling period for the small portion of Orange County, CA, that had remained under quarantine was from July 20 through August 20, 2003. A total of 5 at-risk premises were sampled from a population of 48 at-risk premises in the area. None of the samples yielded a positive result.

**Commercial premises.** No commercial poultry premises were located in the Orange County, CA, quarantined area.

As noted previously, the regulations in § 82.3(a) provide that any area where birds or poultry infected with END are located will be designated as a quarantined area, and that a quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

APHIS epidemiologists have evaluated the results of the investigations conducted in Orange County, CA, and have determined that we may now eliminate the quarantined area in that county. This determination is based on, among other things, the demonstrated absence of birds or poultry infected with or exposed to END in that area. The regulations in § 82.14 provide requirements that must be met before an area may be removed from quarantine, but those requirements relate to measures taken with respect to END-infected or -exposed birds and poultry, their eggs and manure, and articles and premises with which such birds or their manure or litter have come in contact. As there were no END-infected or -exposed birds or poultry in the portion of Orange County, CA, that has been under quarantine for END, there are no requirements under § 82.14 that need to be met before that area can be removed from quarantine.

#### *Areas That Contained Infected Premises*

An area where END-positive premises have been detected is known as an “infected area.” The infected area in California had a total of 920 END-positive premises, 900 of which were located in Kern, Los Angeles, Riverside, San Bernardino, and Ventura Counties. (The remaining 20 END-positive premises had been located in San Diego County, CA, which we released from quarantine in our August 4, 2003, interim rule.) Fourteen of those 900 premises were commercial poultry premises. All birds on all infected premises, and any premises exposed to those infected premises, were depopulated. The date of depopulation on the final END-positive premises in each county still under quarantine in the infected area of California was:

- Ventura County: April 9, 2003;
- Kern County: May 12, 2003;
- Riverside County: May 20, 2003;
- San Bernardino County: May 22, 2003; and
- Los Angeles County: June 1, 2003.

Intensive surveillance and testing of both noncommercial and commercial poultry premises was carried out in the infected area and resulted in no additional END positive premises being detected.

**Noncommercial premises.** An inventory of at-risk noncommercial premises was developed for the infected area. Surveillance efforts were then concentrated in portions of the infected area that had at-risk premises. An at-risk premises was defined as a premises inhabited by poultry, ratites, or an aviary. Within this population, premises considered highest risk were targeted for sampling.

In the infected area of Kern, Los Angeles, Riverside, San Bernardino, and Ventura Counties, CA, all of the sampling was conducted during the period from June 15 through August 20, 2003. The majority of the sampling was conducted during the period from July 5 to August 9, 2003. Overall, a total of 4,544 at-risk premises were sampled from a population of 22,745 at-risk premises in the infected area. Over 57,500 birds were sampled and tested for the END virus. None of the samples yielded a positive result.

TABLE 1.—AT-RISK NONCOMMERCIAL PREMISES SAMPLED BY COUNTY IN CALIFORNIA

County	Number of premises sampled
Kern .....	56

TABLE 1.—AT-RISK NONCOMMERCIAL PREMISES SAMPLED BY COUNTY IN CALIFORNIA—Continued

County	Number of premises sampled
Los Angeles .....	2,027
Riverside .....	1,229
San Bernardino .....	1,142
Ventura .....	90

*Commercial premises.* Active weekly surveillance of commercial poultry premises in the infected area began as early as December 2002. All but five commercial premises with birds have been under weekly active surveillance for at least 6 weeks and have a documented biosecurity protocol in place. Of the remaining five commercial premises, one (a premises with quail) has been under weekly active surveillance for at least 4 weeks and four (two with ostriches, one with ducks, and one hatchery) are under passive surveillance. All these commercial premises must report any significant increase in death losses or the occurrences of clinical signs consistent with END.

A total of 93 commercial poultry premises are located in the infected area, of which 72 premises had birds present. The 21 other commercial premises are egg processors and did not participate in active surveillance. Fourteen of the 72 premises that had birds present were found to be infected, and 1 premises was found to have been exposed to infected premises; all 15 were depopulated, and 6 other premises were emptied of birds by their owners for other reasons. With 5 of the 15 depopulated premises having been repopulated, there were 56 premises with birds in the infected area. A representative sampling of either live or dead birds from each poultry house on 52 of those 56 premises with birds was performed weekly. The other four commercial premises with birds were under passive surveillance. Sample collection was done by either an accredited veterinarian or authorized company personnel. No END positive premises were found.

We have determined that all applicable requirements of § 82.14 to remove an area from quarantine have been met with respect to the remaining areas in California. Specifically, we have determined the following:

- All birds and poultry exposed to END have been found to be free of END or have been euthanized;
- All birds and poultry infected with END have been euthanized;

- All parts of all birds and poultry that were euthanized or that died from any cause other than slaughter, all eggs produced by birds or poultry infected with or exposed to END, and all manure generated by and litter used by birds or poultry infected with or exposed to END have been buried at least 6 feet deep and covered at the time of burial with soil in a location within the quarantined area that meets all U.S. Environmental Protection Agency (EPA), State, and local requirements for landfills;

- All vehicles with which the birds or poultry infected with or exposed to END or their excrement or litter have had physical contact have been cleaned and disinfected in the manner prescribed in § 82.14(f);

- All cages, coops, containers, troughs, and other equipment used for birds or poultry infected with or exposed to END or their excrement or litter have been reduced to ashes by incineration or have been cleaned and disinfected in the manner prescribed in § 82.14(g); and

- The premises where birds or poultry infected with or exposed to END were located have been cleaned and disinfected in the manner prescribed in § 82.14(h).

#### Conclusion

Based on the information presented above, we are amending § 82.3(c) in this interim rule by removing the remaining portions of Kern, Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties, CA, from the list of quarantined areas because the continued quarantine of these areas is no longer necessary to contain all birds and poultry infected with or exposed to END. With this action, there are no longer any areas in the United States that are quarantined because of END.

#### Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. We have determined that portions of Kern, Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties, CA, may now be removed from the list of areas quarantined because of END. Therefore, immediate action is warranted to relieve the prohibitions or restrictions that have applied to the movement of birds, poultry, products, and other materials from those areas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than

30 days after publication in the **Federal Register**.

We will consider comments that we receive during the comment period for this interim rule (*see DATES* above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the regulations by removing portions of Kern, Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties, CA, from the list of quarantined areas. This action needs to be made effective immediately in order to remove restrictions on the movement of birds, poultry, and certain other articles from those areas that are no longer necessary.

This situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

#### 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 12988

This rule has been reviewed under Executive Order 12988, 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

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## List of Subjects in 9 CFR Part 82

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

■ Accordingly, 9 CFR part 82 is amended as follows:

### PART 82—EXOTIC NEWCASTLE DISEASE (END) AND CHLAMYDIOSIS

■ 1. The authority citation for part 82 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 82.3, paragraph (c) is revised to read as follows:

#### § 82.3 Quarantined areas.

\* \* \* \* \*

(c) The following areas are quarantined because of END: There are no areas in the United States quarantined because of END.

Done in Washington, DC this 16th day of September 2003.

**Bobby R. Acord,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–23953 Filed 9–18–03; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM265, Special Conditions No. 25–247–SC ]

#### Special Conditions: Douglas Models DC–8–61, –61F, –63, –63F, –71, –71F, –72, –72F, –73, and –73F Airplanes; High Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Douglas Models DC–8–61, –61F, –63, –63F, –71, –71F, –72, –72F, –73, and –73F airplanes modified by ABX Air, Inc. These airplanes, as modified by ABX Air, Inc., will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of the Innovative Solutions and Support (IS&S) Duplex Reduced Vertical Separation Minimum (RVSM) system which will allow for the removal of the existing altitude alerter, encoding

altimeters, air data computer, and standby altimeter. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is September 10, 2003. Comments must be received on or before October 20, 2003.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM265, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM265.

**FOR FURTHER INFORMATION CONTACT:** Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The FAA has determined that notice and opportunity for prior public comment are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment

closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

#### Background

On November 25, 2002, ABX Air Inc. applied for a supplemental type certificate (STC) to modify Douglas Models DC–8–61, –61F, –63, –63F, –71, –71F, –72, –72F, –73, and –73F airplanes. These models are currently approved under Type Certificate 4A25. The modification incorporates the installation of the IS&S Duplex RVSM system which will allow for the removal of the existing altitude alerter, encoding altimeters, air data computer, and standby altimeter. This system uses two Air Data Display Units (ADDU) and a single Analog Interface Unit (AIU) to replace altitude displays and the air data computer. These displays can be susceptible to disruption to both command and response signals as a result of electrical and magnetic interference. This disruption of signals could result in the loss of all critical flight information displays and annunciations or the presentation of misleading information to the pilot.

#### Type Certification Basis

Under the provisions of 14 CFR 21.101, ABX Air Inc. must show that Douglas Models DC–8–61, –61F, –63, –63F, –71, –71F, –72, –72F, –73, and –73F airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 4A25, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the “original type certification basis.” The certification basis for the modified Douglas Models DC–8–61, –61F, –63, –63F, –71, –71F, –72, –72F, –73, and –73F airplanes include 14 CFR part 25 effective February 1, 1965 as described in Type Certificate Data Sheet 4A25.