

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. 02-117-2, 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. 02-117-2. 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. 02-117-2" 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 82.15, 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. Less than an entire State will be designated as a quarantined area only if the State enforces restrictions on intrastate movements from the quarantined area that are at least as stringent as the regulations. The regulations prohibit or restrict the interstate movement of birds, poultry, products, and materials that could spread END from quarantined areas. Areas quarantined because of END are listed in § 82.3, paragraph (c).

On October 1, 2002, END was confirmed in the State of California. The disease has been confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption, and in commercial poultry.

In an interim rule effective on November 21, 2002, and published in the **Federal Register** on November 26, 2002 (67 FR 70674-70675, Docket No. 02-117-1), we amended the regulations in § 82.3(c) by quarantining Los Angeles County and portions of Riverside and San Bernardino Counties and restricting the interstate movement of birds, poultry, products, and materials that could spread END from the quarantined area.

In this interim rule, we are quarantining additional counties in California, either because END has been confirmed in those counties or because of the geographical proximity of those counties to areas in which END has been confirmed. Specifically, we are amending § 82.3(c) of the regulations by adding Imperial, Orange, San Diego, Santa Barbara, and Ventura Counties and the previously non-quarantined portions of Riverside and San Bernardino Counties to the quarantined area for END and by prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area.

On January 6, 2003 the Secretary of Agriculture signed a declaration of extraordinary emergency with respect to the END situation in California. As provided under sec. 10407 of the Animal Health Protection Act (7 U.S.C. 8306), that declaration of extraordinary emergency authorizes the Secretary to (1) hold, seize, treat, apply other remedial actions to, destroy (including preventative slaughter), or otherwise dispose of, any animal, article, facility, or means of conveyance if the Secretary determines the action is necessary to prevent the dissemination of END and (2) prohibit or restrict the movement or use within the State of California, or any portion of the State of California, of any

animal or article, means of conveyance, or facility if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of END.

As noted previously, the regulations in §§ 82.1 through 82.15 prohibit or restrict the interstate movement from quarantined areas of birds, poultry, products, and materials that could spread END. In light of the Secretary's declaration of extraordinary emergency and its accompanying authority to prohibit or restrict, if necessary to prevent the spread of END, the movement or use within the State of California of any animal or article, means of conveyance, or facility, we are amending the regulations to provide that the provisions of the regulations regarding interstate movement will also apply to intrastate movement. This provision, which we are adding as a new § 82.16, specifies that the applicability of the regulations to intrastate movement holds only in situations where the Secretary has issued a declaration of extraordinary emergency and only until such time as the Secretary terminates that declaration.

##### **Emergency Action**

This rulemaking is necessary on an emergency basis to prevent END from spreading to other States. 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 rule 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 quarantining Imperial, Orange, San Diego, Santa Barbara, and Ventura Counties, CA, and the previously non-quarantined portions of Riverside and San Bernardino Counties, CA, and by prohibiting or restricting the movement of birds, poultry, products, and