

encompassed the 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.

Following the detection of END in Texas, intensive surveys were conducted in the five-county quarantined area. The original infected premises proved to be the only premises with END-infected birds. Three "dangerous contact" premises (*i.e.*, premises with an epidemiological link to the infected premises) were identified, along with 51 premises (42 containing poultry and 9 with only pet birds) located within a 1 kilometer radius of the infected premises. All birds and poultry on those 54 premises were tested for END with negative results. Across the five-county quarantined area, additional surveys were conducted in targeted high-risk areas. Populated areas, reports from animal control units, and leads derived from reports of sick birds or poultry or other epidemiological information were used to define the high-risk areas. No additional cases were identified in any of these areas. Passive surveillance, including education and outreach efforts, continues to be conducted throughout the States. A total of 1,591 investigations were conducted in New Mexico and Texas, with 839 flocks tested. No evidence of additional disease spread was identified through this surveillance. There is a single commercial premises in the quarantined area, located in Berino, Dona Ana County, NM. Swabs were submitted on a weekly basis from this facility, all with negative results. A review of biosecurity procedures and other records was also conducted on a weekly basis. All test results reported through May 12, 2003, have been negative.

Reduction of Quarantined Areas

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.

Animal and Plant Health Inspection Service epidemiologists have evaluated the results of the investigations conducted in New Mexico and Texas and have determined that we may now reduce the size of the quarantined area in Texas and that it is no longer

necessary to maintain quarantined areas in New Mexico. This determination is based on, among other things, the demonstrated absence of birds or poultry infected with or exposed to END in specific areas. 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 areas that we are removing from quarantine, there are no requirements under § 82.14 that need to be met before those areas can be removed from quarantine.

Therefore, in this interim rule, we are amending § 82.3(c) by removing Dona Ana, Luna, and Otero Counties, NM, Hudspeth County, TX, and portions of El Paso County, TX, 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. That portion of El Paso County, TX, that will remain as a quarantined area, which is described in the amendments to § 82.3(c) at the end of this document, has been deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. We have determined that Dona Ana, Luna, and Otero Counties, NM, Hudspeth County, TX, and portions of El Paso County, TX, 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 Dona Ana, Luna, and Otero Counties, NM, Hudspeth County, TX, and portions of El Paso County, TX, 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: