

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Part 354****[Docket No. 02-085-2]****AQI User Fees: Extension of Current Fees Beyond Fiscal Year 2002****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 regulations to ensure that fiscal year 2002 user fee rates remain in effect beyond fiscal year 2002 until the fees are revised.

**EFFECTIVE DATE:** The interim rule became effective on September 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** For information concerning program operations, contact Mr. Jim Smith, Director, Port Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737-1236; (301) 734-8295. For information concerning rate development, contact Ms. Donna Ford, PPQ User Fees Section Head, FMD, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737-1232; (301) 734-5901.

**SUPPLEMENTARY INFORMATION:****Background**

Section 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136a), referred to below as the FACT Act, authorizes the Animal and Plant Health Inspection Service to collect user fees for agricultural quarantine and inspection (AQI) services. The FACT Act was amended by § 917 of the Federal Agricultural Improvement and Reform Act of 1996 (Pub. L. 104-127), on April 4, 1996.

In an interim rule effective and published in the **Federal Register** on September 3, 2002 (67 FR 56217-56218, Docket No. 02-085-1), we amended the user fee regulations in 7 CFR part 354 to ensure that fiscal year 2002 rates remain in effect beyond fiscal year 2002 until the fees are revised.

Comments on the interim rule were required to be received on or before November 4, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866

and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

**List of Subjects in 7 CFR Part 354**

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

**PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES**

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 354 and that was published at 67 FR 56217-56218 on September 3, 2002.

**Authority:** 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

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

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03-1607 Filed 1-23-03; 8:45 am]

**BILLING CODE 3410-34-P****DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Part 82****[Docket No. 02-117-3]****Exotic Newcastle Disease; Additions to Quarantined Area****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 quarantining Clark County, NV, and a portion of Nye County, NV, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread exotic Newcastle disease from the quarantined area. This action is necessary on an emergency basis to prevent the spread of exotic Newcastle disease from the quarantined area.

**DATES:** This interim rule was effective January 17, 2003. We will consider all comments that we receive on or before March 25, 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. 02-117-3, 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. 02-117-3. 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. 02-117-3" 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 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 was 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, CA, and portions of Riverside and San Bernardino Counties, CA, and restricting the interstate movement of birds, poultry, products, and materials that could spread END from the quarantined area.

In a second interim rule effective on January 7, 2003, and published in the **Federal Register** on January 13, 2003 (68 FR 1515–1517, Docket No. 02–117–2), we further amended § 82.3(c) by adding Imperial, Orange, San Diego, Santa Barbara, and Ventura Counties, CA, and the previously non-quarantined portions of Riverside and San Bernardino Counties, CA, to the list of quarantined areas. Because the Secretary of Agriculture signed a declaration of extraordinary emergency with respect to the END situation in California on January 6, 2003 (*see* 68 FR 1432, Docket No. 03–001–1, published January 10, 2003), that second interim rule also amended the regulations to provide that the prohibitions and restrictions that apply to the interstate movement of birds, poultry, products, and materials that could spread END will also apply to the intrastate movement of those articles in situations where the Secretary of Agriculture has issued a declaration of extraordinary emergency (new § 82.16).

On January 16, 2003, END was confirmed in backyard poultry on a premises in Las Vegas, NV. Therefore, in this interim rule we are amending § 82.3(c) by designating as a quarantined area all of Clark County, NV, and that portion of Nye County, NV, that lies south of U.S. Highway 95 and east of

State Highway 373 and by prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. As provided for by the regulations in § 82.3(a), this quarantined area encompasses 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.

#### Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of END. 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 Clark County, NV, and a portion of Nye County, NV, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. This action is necessary on an emergency basis to prevent the spread of END from the quarantined area.

This emergency 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 rule contains no new 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; POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

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 amended by adding, in alphabetical order, an entry for Nevada to read as follows:

#### § 82.3 Quarantined areas.

\* \* \* \* \*

(c) \* \* \*

\* \* \* \* \*

#### Nevada

*Clark County.* The entire county.

*Nye County.* That portion of the county that lies south of U.S. Highway 95 and east of State Highway 373.

Done in Washington, DC, this 17th day of January 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–1608 Filed 1–23–03; 8:45 am]

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