

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 1

[Docket No. 02-077-1]

#### Subpoenas Issued Under the Animal Health Protection Act

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the administrative regulations of the Office of the Secretary of Agriculture to reflect the subpoena provisions of the Animal Health Protection Act. Under the Animal Health Protection Act, the Secretary of Agriculture can subpoena witnesses and documents relating to the administration or enforcement of the Animal Health Protection Act or any matter being investigated in connection with the Animal Health Protection Act. This final rule is necessary to establish regulations governing the issuance of subpoenas under this authority. We are also amending the administrative regulations, where necessary, by including references to the Animal Health Protection Act, the Plant Protection Act, and Title V of the Agricultural Risk Protection Act of 2000, and removing references to statutes repealed by the Plant Protection Act.

**EFFECTIVE DATE:** November 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan R. Christian, Director, Investigative and Enforcement Services, APHIS, 4700 River Road Unit 85, Riverdale, MD 20737-1231; (301) 734-8684.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Animal and Plant Health Inspection Service (APHIS), through its Veterinary Services (VS) program, regulates animals, animal products, and

other articles to prevent the introduction or spread of animal diseases and pests. When it appears that VS regulations have been violated, APHIS conducts an investigation. In conducting the investigation, it may be necessary to issue a subpoena for testimony or for documents and other records.

Title X, subtitle E, of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171, 7 U.S.C. 8301-8317), known as the Animal Health Protection Act (AHPA), updates and consolidates a number of animal health statutes. Under section 10415 of the AHPA (7 U.S.C. 8314), the Secretary of Agriculture has the authority to issue subpoenas for testimony and for documents and other records relating to administration or enforcement of the AHPA. The authority for signing subpoenas has been delegated from the Secretary to the Under Secretary of Marketing and Regulatory Programs, and from the Under Secretary of Marketing and Regulatory Programs to the Administrator, APHIS (7 CFR 2.22 and 2.80).

The AHPA requires that we publish procedures for issuing subpoenas. According to § 10415(a)(2)(E) of the AHPA (7 U.S.C. 8314), the procedures must include a requirement that subpoenas be reviewed for legal sufficiency and signed by the Secretary. The Act further requires that "if the authority to sign a subpoena is delegated to an agency other than the Office of Administrative Law Judges, the agency receiving the delegation shall seek review of the subpoena for legal sufficiency outside that agency."

To comply with these requirements, we are amending 7 CFR 1.29 and 1.131. Section 1.29 governs the issuance of subpoenas relating to investigations under statutes administered by the Secretary. Paragraph (3) states that the Office of the General Counsel, USDA, will review subpoenas for legal sufficiency that are issued under certain statutes. We are amending paragraph (3) to state that the Office of the General Counsel will also review for legal sufficiency subpoenas that are issued under the AHPA.

Section 1.131 comes under subpart H of part 1. Subpart H contains rules of practice for formal adjudicatory proceedings instituted by the Secretary under various statutes. We are

amending § 1.131 to add the AHPA to the list of covered statutes. We are also updating § 1.131 by removing references to statutes that were repealed by the Plant Protection Act (PPA, 7 U.S.C. 7701-7772).

We are also updating § 1.183, which comes under subpart J of part 1. Subpart J contains procedures relating to awards under the Equal Access to Justice Act in proceedings before the Department. We are amending § 1.183 by adding the AHPA and Title V of the Agricultural Risk Protection Act of 2000, section 501(a) (7 U.S.C. 2279e) to the list of covered statutes and by revising the citations provided in the entry for the PPA.

This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive Orders 12866 and 12988. Moreover, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and it may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121. Finally, this action is not a rule as defined by 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

#### Paperwork Reduction Act

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

#### List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Agriculture, Antitrust, Blind, Claims, Concessions, Cooperatives, Equal access to justice, Federal buildings and facilities, Freedom of information, Lawyers, Privacy.

Accordingly, we are amending 7 CFR part 1 as follows:

#### PART 1—ADMINISTRATIVE REGULATIONS

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

**Authority:** 5 U.S.C. 301, unless otherwise noted.

**Subpart B—Departmental Proceedings****§ 1.29 [Amended]**

2. In § 1.29, paragraph (a)(3) is amended by adding the words “Animal Health Protection Act (7 U.S.C. 8301–8317),” before the word “Plant”, and by adding a comma before the word “or”.

**Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes**

3. The authority citation for Subpart H is revised to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 61, 87e, 228, 268, 499o, 608c(14), 1592, 1624(b), 2151, 2279e, 2621, 2714, 2908, 3812, 4610, 4815, 4910, 6009, 6107, 6207, 6307, 6411, 6808, 7107, 7734, 8313; 15 U.S.C. 1828; 16 U.S.C. 620d, 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 43 U.S.C. 1740; 7 CFR 2.35, 2.41.

**§ 1.131 [Amended]**

4. In § 1.131, paragraph (a) is amended by adding, in alphabetical order, “Animal Health Protection Act, section 10414 (7 U.S.C. 8313).”, and by removing “Act of August 20, 1912, commonly known as the Plant Quarantine Act, section 10, as amended (7 U.S.C. 163, 164).”, “Act of January 31, 1942, as amended (7 U.S.C. 149).”, and “Federal Plant Pest Act, section 108, as amended (7 U.S.C. 150gg).”.

**Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department**

5. The authority citation for Subpart J continues to read as follows:

**Authority:** 5 U.S.C. 504(c)(1).

**§ 1.183 [Amended]**

6. In § 1.183, paragraph (a)(2) is amended by adding, in alphabetical order, “Animal Health Protection Act, sections 10414 and 10415 (7 U.S.C. 8313 and 8314)” and “Title V of the Agricultural Risk Protection Act of 2000, section 501(a) (7 U.S.C. 2279e)”;

and in the entry for the Plant Protection Act, by removing the citations “7 U.S.C. 2279e, 7734(b), 7736” and adding the citations “7 U.S.C. 7734, 7735, and 7736” in their place.

Dated: November 20, 2002.

**Ann M. Veneman,**

*Secretary of Agriculture.*

[FR Doc. 02–29985 Filed 11–25–02; 8:45 am]

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**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Part 82**

[Docket No. 02–117–1]

**Exotic Newcastle Disease; Designation of 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 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 exotic Newcastle disease from the quarantined area. This action is necessary on an emergency basis to prevent the interstate spread of exotic Newcastle disease from the quarantined area.

**DATES:** This interim rule was effective November 21, 2002. We will consider all comments that we receive on or before January 27, 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. 02–117–1, 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. 02–117–1. 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. 02–117–1” 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](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 END regulations, contained in 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. Section 82.3, paragraph (a), provides that any area where birds or poultry infected with END are located will be designated as a quarantined area. 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 restrict the interstate movement of birds, poultry, products, and materials that could spread END from quarantined areas. Prior to this rule, no areas were listed as quarantined in § 82.3(c) because of END.

On October 1, 2002, END was confirmed in the State of California. The disease has been diagnosed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption. At this time, commercial poultry are not involved in the disease occurrence.

The State of California and the Animal and Plant Health Inspection Service have begun an intensive END eradication program in the quarantined area in Los Angeles, Riverside, and San Bernardino Counties. Also, California has taken action to restrict the intrastate movement of birds, poultry, products, and materials that could spread END from the quarantined area.

Accordingly, to prevent the spread of END into other States, we are amending § 82.3(c) by designating Los Angeles County and portions of Riverside and San Bernardino Counties, CA, as a quarantined area for END. The quarantined area is described in the rule portion of this document.