

before April 21, 2009. No comments were received. Therefore, for the reasons given in the interim final rule, we are adopting the interim final rule as a final rule, without change.

To view the interim final rule, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=AMS-FV-08-0105>.

This action also affirms information contained in the interim final rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (74 FR 7782, February 20, 2009) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

#### PART 932—OLIVES GROWN IN CALIFORNIA—[AMENDED]

■ Accordingly, the interim final rule that amended 7 CFR part 932 and that was published at 74 FR 7782 on February 20, 2009, is adopted as final rule, without change.

Dated: July 28, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9-18415 Filed 7-31-09; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Part 145

[Docket No. APHIS-2007-0042]

RIN 0579-AC78

#### National Poultry Improvement Plan and Auxiliary Provisions; Technical Amendment

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** In a final rule that was published in the **Federal Register** on April 1, 2009 (74 FR 14710-14719, Docket No. APHIS-2007-0042), and effective on May 1, 2009, we amended

the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. In that final rule, we amended the U.S. Avian Influenza Clean program for multiplier meat-type chicken breeding flocks to require that 15 birds be tested to retain the classification, rather than 30. However, our amendatory instruction accomplishing this change also amended the program to require multiplier spent fowl to be tested within 15 days prior to movement to slaughter, rather than 30 days. We had intended to retain the 30-day requirement. This document corrects that error.

**DATES:** *Effective Date:* August 3, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 101, Conyers, GA 30094-5104; (770) 922-3496.

#### SUPPLEMENTARY INFORMATION:

##### Background

In a final rule that was published in the **Federal Register** on April 1, 2009 (74 FR 14710-14719, Docket No. APHIS-2007-0042), and effective on May 1, 2009, we amended the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. The regulations in 9 CFR parts 145, 146, and 147 contain the provisions of the Plan.

We amended the U.S. Avian Influenza Clean program for multiplier meat-type chicken breeding flocks in § 145.33(l) by reducing the sample of birds required to be tested from 30 to 15 and reducing the interval at which the sample must be tested from 180 to 90 days. As the 30-bird sample is referred to 4 times in paragraph (l), the amendatory instruction to accomplish this change indicated that the numeral “30” should be replaced each time it occurred in paragraph (l) with the numeral “15.” However, paragraph (l)(2)(i) of § 145.33 also contained a requirement that multiplier spent fowl be tested within 30 days prior to movement to slaughter. Thus, our amendatory instruction inadvertently changed that requirement to require testing of multiplier spent fowl 15 days prior to slaughter. We had intended to retain the 30-day requirement. This document corrects that error.

#### List of Subjects in 9 CFR Part 145

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

■ Accordingly, we are amending 9 CFR part 145 as follows:

#### PART 145—NATIONAL POULTRY IMPROVEMENT PLAN FOR BREEDING POULTRY

■ 1. The authority citation for part 145 continues to read as follows:

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

##### § 145.33 [Amended]

■ 2. In § 145.33, paragraph (l)(2)(i) is amended by removing the words “15 days” and adding the words “30 days” in their place.

Done in Washington, DC, this 27th day of July 2009.

William H. Clay,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9-18485 Filed 7-31-09; 8:45 am]

BILLING CODE 3410-34-P

#### NUCLEAR REGULATORY COMMISSION

#### 10 CFR Part 26

[NRC-2002-0002]

RIN 3150-AF12

#### Fitness for Duty Programs

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This document corrects a final rule appearing in the **Federal Register** on March 31, 2008 (73 FR 16965), that amended the Nuclear Regulatory Commission's (NRC's) regulations that govern fitness for duty programs. This document is necessary to correct erroneous language in the preamble and codified language of the final rule. These corrections include fixing typographical errors and cross-references, revising language in the preamble to clarify unintended discrepancies with the codified rule text, and making non-substantive changes to the rule text that do not modify any requirements in the final rule.

**DATES:** The correction is effective August 3, 2009, and is retroactively applicable to March 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Lynn Hall, Office of Nuclear Reactor

Regulation, U.S. Nuclear Regulatory Commission, telephone 301-415-3759, e-mail: [Lynn.Hall@nrc.gov](mailto:Lynn.Hall@nrc.gov).

**ADDRESSES:** Documents related to this correction can be publicly accessed using the following methods:

*Federal e-Rulemaking Portal:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC-2002-0002]. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

*NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-899-397-4209, 301-415-4737, or by e-mail: [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

**SUPPLEMENTARY INFORMATION:** This document corrects erroneous language to the preamble and codified language of the Part 26 final rule published on March 31, 2008 (73 FR 16965). Also, as published, the final regulations contain errors which may prove to be misleading and need to be clarified. The following corrects the preamble to the March 31, 2008 document.

1. On page 16972, third column, in the second paragraph, the second sentence is corrected to read as follows:

The final rule introduces the concept of "authorization" to Part 26 to refer to the status of an individual who the licensee or other entity has determined can be trusted to avoid substance abuse, and, therefore, may be permitted to have the types of access or perform the duties described in § 26.4 [FFD program applicability to categories of individuals], as a result of the process described in this subpart.

2. On page 16983, first column, in the third complete paragraph, the second sentence is corrected to read as follows:

Surveys and expert panels have suggested that tolerance for overtime is generally limited to 300-400 hours of overtime per year (ADAMS Accession No. ML090850025); (NUREG/CR-4248).

3. On page 17002, third column, in the second complete paragraph, the first sentence is corrected to read as follows:

Section 26.4(g) of the final rule amends the proposed rule to clarify the requirements that the FFD program personnel specified in this paragraph must meet.

4. On page 17007, first column, the complete sentence beginning on line 15 is corrected to read as follows:

The definition explicitly states the criterion that the term "directing" refers to an individual who is "directly involved in the execution of the work activity" and either "is ultimately responsible for the correct performance of that work activity" as opposed to, for example, the planning, development or scheduling of the activity, or whose technical input does not receive "subsequent technical review."

5. On page 17030, third column, in the first complete paragraph, the first sentence is corrected to read as follows:

The NRC has added § 26.41(d)(2) to ensure that licensees' and other entities' contracts with C/Vs and HHS-certified laboratories permit the licensee or other entity to obtain copies of and take away any documents that auditors may need to assure that the C/V, its subcontractors, or the HHS-certified laboratory are performing their functions properly and that staff and procedures meet applicable requirements.

6. On page 17086, third column, in the second complete paragraph, the first sentence is corrected to read as follows:

Section 26.137(d)(5) requires that one of the quality control samples included in each analytical run must appear to be a donor specimen to licensee testing facility technicians.

7. On page 17088, second column, in the second complete paragraph, the fourth sentence is corrected to read as follows:

Section 26.137(e)(6)(v) requires that one sample must appear to be a donor sample to the licensee testing facility technicians.

8. On page 17092, first column, in the second complete paragraph, the third sentence is corrected to read as follows:

The cross-reference to former § 26.29 has been updated to reference § 26.37 in the final rule.

9. On page 17117, first column, in the second complete paragraph, the third sentence is corrected to read as follows:

Therefore, § 26.189(a)(1) through (a)(5) provides examples of the healthcare professionals who are qualified to address various fitness issues that may arise in an FFD program.

10. On page 17138, first column, the third complete sentence beginning on line 15 is corrected to read as follows:

If at any time during a unit outage an individual performs duties specified in § 26.4(a)(1) through (a)(4) on or for a unit that is not disconnected from the electrical grid, the individual is subject to the minimum day off requirements of § 26.205(d)(3) while the individual is performing those duties.

#### List of Subjects in 10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 26.

#### PART 26—FITNESS FOR DUTY PROGRAMS

■ 1. The authority citation for part 26 continues to read as follows:

**Authority:** Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201, 2297f); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

■ 2. In § 26.31, paragraphs (c)(4), (c)(5), and (d)(1) introductory text are revised to read as follows:

##### § 26.31 Drug and alcohol testing.

\* \* \* \* \*

(c) \* \* \*

(4) *Follow-up.* As part of a follow-up plan to verify an individual's continued abstinence from substance abuse; and

(5) *Random.* On a statistically random and unannounced basis, so that all individuals in the population subject to testing have an equal probability of being selected and tested.

(d) *General requirements for drug and alcohol testing—(1) Substances tested.* At a minimum, licensees and other entities shall test for marijuana metabolite, cocaine metabolite, opiates (codeine, morphine, 6-acetylmorphine), amphetamines (amphetamine, methamphetamine), phencyclidine, adulterants, and alcohol.

\* \* \* \* \*

■ 3. In § 26.41, paragraph (d)(1) is revised to read as follows:

**§ 26.41 Audits and corrective action.**

\* \* \* \*

(d) \* \* \*

(1) The contracts of licensees and other entities with C/Vs and HHS-certified laboratories must reserve the right to audit the C/V, the C/V's subcontractors providing FFD program services, and the HHS-certified laboratories at any time, including at unannounced times, as well as to review all information and documentation that is reasonably relevant to the audits.

\* \* \* \*

■ 4. In § 26.69, paragraphs (c)(3) and (d)(2) are revised to read as follows:

**§ 26.69 Authorization with potentially disqualifying fitness-for-duty information.**

\* \* \* \*

(c) \* \* \*

(3) If the designated reviewing official determines that a determination of fitness is required, verify that a professional with the appropriate qualifications, as specified in § 26.189(a), has indicated that the individual is fit to safely and competently perform his or her duties;

\* \* \* \*

(d) \* \* \*

(2) If the designated reviewing official concludes that a determination of fitness is required, verify that a professional with the appropriate qualifications, as specified in § 26.189(a), has indicated that the individual is fit to safely and competently perform his or her duties; and

\* \* \* \*

■ 5. In § 26.137, paragraphs (d)(2)(i), (d)(5), and (e)(6)(v) are revised to read as follows:

**§ 26.137 Quality assurance and quality control.**

\* \* \* \*

(d) \* \* \*

(2) \* \* \*

(i) Colorimetric pH tests must have a dynamic range of 2 to 12 and pH meters must be capable of measuring pH to one decimal place.

\* \* \* \*

(5) Each analytical run performed to conduct initial validity testing shall include at least one quality control sample that appears to be a donor specimen to the licensee testing facility technicians.

\* \* \* \*

(e) \* \* \*

(6) \* \* \*

(v) At least one positive control, certified to be positive by an HHS-certified laboratory, which appears to be

a donor specimen to the licensee testing facility technicians.

\* \* \* \*

■ 6. In § 26.153, paragraph (f)(3) is revised to read as follows:

**§ 26.153 Using certified laboratories for testing urine specimens.**

\* \* \* \*

(f) \* \* \*

(3) The laboratory shall maintain test records in confidence, consistent with the requirements of § 26.37, and use them with the highest regard for individual privacy.

\* \* \* \*

Dated at Rockville, Maryland, this 27th day of July 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E9-18364 Filed 7-31-09; 8:45 am]

BILLING CODE 7590-01-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 25**

[Docket No.: FAA-2007-27654; Amendment No. 25-129]

RIN 2120-AI90

**Activation of Ice Protection**

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Aviation Administration amends the airworthiness standards applicable to transport category airplanes certificated for flight in icing conditions. The rule requires a means to ensure timely activation of the airframe ice protection system. This rule is the result of information gathered from a review of icing accidents and incidents, and will improve the level of safety for new airplane designs for operations in icing conditions.

**DATES:** This amendment becomes effective September 2, 2009.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this final rule contact Kathi Ishimaru, FAA, Propulsion and Mechanical Systems Branch, ANM-112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave., SW., Renton, Washington 98057-3356; telephone (425) 227-2674; fax: (425) 227-1320, e-mail: [kathi.ishimaru@faa.gov](mailto:kathi.ishimaru@faa.gov). For legal questions concerning this final rule contact Douglas Anderson, FAA, Office

of Regional Counsel, Federal Aviation Administration, 1601 Lind Ave., SW., Renton, Washington 98057-3356; telephone (425) 227-2166; fax: (425) 227-1007, e-mail:

[Douglas.Anderson@faa.gov](mailto:Douglas.Anderson@faa.gov).

**SUPPLEMENTARY INFORMATION:****Authority for This Rulemaking**

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft. This regulation is within the scope of that authority because it prescribes new safety standards for the design of transport category airplanes.

**I. Background**

On October 31, 1994, an accident involving an Avions de Transport Regional ATR 72 series airplane occurred in icing conditions.<sup>1</sup> This prompted the FAA to initiate a review of aircraft inflight icing safety and determine changes that could be made to increase the level of safety. In May 1996, the FAA sponsored the International Conference on Aircraft Inflight Icing where icing specialists recommended improvements to increase the level of safety of aircraft operating in icing conditions. The FAA reviewed the conference recommendations and developed a comprehensive multi-year icing plan. The FAA Inflight Aircraft Icing Plan (Icing Plan), dated April 1997,<sup>2</sup> described various activities the FAA was contemplating to improve safety when operating in icing conditions. In accordance with the Icing Plan, the FAA tasked the Aviation Rulemaking Advisory Committee (ARAC),<sup>3</sup> through its Ice Protection Harmonization Working Group, to consider the need for ice detectors or other acceptable means to warn flightcrews of ice accretion on critical surfaces requiring crew action. This rule

<sup>1</sup> This accident and an Empressa Brasilia accident resulted in NTSB recommendations nos. A-96-56 and A-98-91. This final rule partially addresses these safety recommendations.

<sup>2</sup> FAA Inflight Aircraft Icing Plan, dated April 1997, available in the Docket.

<sup>3</sup> Published in the **Federal Register**, December 8, 1997 (62 FR 64621).