Rules and Regulations

Federal Register
Vol. 62, No. 156
Wednesday, August 13, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ENVIRONMENTAL PROTECTION AGENCY

5 CFR Chapter LIV

40 CFR Part 3

[FRL–5870–7]

Revocation of Obsolete Employee Responsibilities and Conduct Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is revoking the remaining provisions of its residual Employee Responsibilities and Conduct regulation. These provisions, which are no longer needed, merely cross-reference the Government-wide and EPA Standards of Ethical Conduct at 5 CFR parts 2634, 2635, and 6401 and set forth EPA's old regulatory conflict of interest waivers which have now been superseded by Office of Government Ethics Government-wide regulatory waivers.

EFFECTIVE DATE: August 13, 1997.

FOR FURTHER INFORMATION CONTACT: Donnell L. Nantkes, Office of General Counsel (2311), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–4556.

SUPPLEMENTARY INFORMATION:

I. Background

Most of the former provisions of 40 CFR part 3 were removed when the Environmental Protection Agency, with the concurrence of the Office of Government Ethics, published its Supplemental Standards of Ethical Conduct for Employees of the Environmental Protection Agency on August 2, 1996 at 61 FR 40500. (Most of these provisions had previously been superseded when the Office of Government Ethics' ''Standards of Ethical Conduct for Employees of the Executive Branch,'' as now codified at 5 CFR part 2635, became generally effective on February 3, 1993.) The only provisions of 40 CFR part 3, as revised in the EPA rulemaking last August, which remained in effect were new 40 CFR 3.100 and new redesignated 40 CFR 3.101. These provisions cross-referenced the Government-wide and EPA Standards of Ethical Conduct at 5 CFR parts 2634, 2635, and 6401 and retained EPA's regulatory waivers of previously designated 40 CFR 3.301(b) pending publication of Government-wide regulatory waivers by the Office of Government Ethics. These Government-wide waivers, which OGE published on December 18, 1996 at 61 FR 66830, as corrected at 62 FR 1361 and 23127, revised 5 CFR part 2640 to establish Government-wide regulatory waivers of the conflict of interest provisions of 18 U.S.C. 208(a) as authorized by 18 U.S.C. 208(b)(2) and provided that, as of January 17, 1997, regulatory waivers issued by individual agencies would no longer be effective.

The regulatory waivers at 40 CFR. 3.101 have been superseded by the Government-wide regulatory waivers, and the cross-referencing provision of 40 CFR 3.100 is not sufficiently important to justify its retention. Therefore, EPA is removing 40 CFR part 3.

III. Matters of Regulatory Procedure

Executive Order 12866

In issuing this rule, EPA has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and Budget under that Executive order, as it deals with agency organization, management, and personnel matters and is not, in any event, deemed ''significant'' thereunder.

Paperwork Reduction Act

EPA has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because the proposed regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Administrative Procedure Act

EPA has found that good cause exists under 5 U.S.C. 553(b)(3) (A), (B) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these rules and revocations. This rulemaking is related solely to EPA's organization, procedure, and practice. Further, this regulation merely eliminates provisions which have been superseded in any event and should therefore become effective immediately.

List of Subjects in 40 CFR Part 3

Environmental protection, Conflict of interests, Government employees.

Dated: July 30, 1997.

Carol M. Browner,

Administrator, Environmental Protection Agency.

For the reasons set forth in the preamble, the Environmental Protection Agency is removing part 3 of title 40 of the Code of Federal Regulations in accordance with its authority at 5 U.S.C. 7301.

[FR Doc. 97–21379 Filed 8–12–97; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–056–4]

Mediterranean Fruit Fly; Additions to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding an area in Hillsborough County, FL, and adding an area in Orange County, FL, to the list of quarantined areas. We are also revising the entry for Manatee County, FL, to make the boundary lines of the quarantined area more accurate. The regulations restrict the interstate movement of regulated articles from the quarantined areas. This action is necessary on an emergency basis to prevent the spread of the

Mediterranean fruit fly into noninfested areas of the continental United States.

DATES: Interim rule effective August 7, 1997. Consideration will be given only to comments received on or before October 14, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–056–4, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–056–4. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

An interim rule effective on June 16, 1997, and published in the **Federal Register** on June 20, 1997 (62 FR 33537–33539, Docket No. 97–056–2), added a portion of Hillsborough County, FL, to the list of quarantined areas and restricted the interstate movement of regulated articles from the quarantined area. We also published another interim rule effective on July 3, 1997, and published in the **Federal Register** on July 10, 1997 (62 FR 36976–36978, Docket No. 97–056–3), that expanded the quarantined area in Hillsborough County, FL, and added areas in Manatee and Polk Counties, FL, to the list of quarantined areas.

Recent trapping surveys by inspectors of Florida State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of Medfly has occurred in an additional area in Hillsborough County and in a portion of Orange County, FL.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Medfly. The boundary lines for a portion of a State being designated as quarantined are set up approximately four-and-one-half-miles from the detection sights. The boundary lines may vary due to factors such as the location of hosts, the location of transportation centers, such as bus stations and airports, the pattern of persons moving in that State, the number and patterns of distribution of the Medfly, and the use of clearly identifiable lines for the boundaries.

In accordance with these criteria and the recent Medfly findings described above, we are amending § 301.78–3 by adding an area in Hillsborough County, FL, and adding an area in Orange County, FL, to the list of quarantined areas. In addition, we are revising the entry for Manatee County, FL, to make the boundary lines more accurately reflect the criteria described above. The resulting quarantined areas are described in the rule portion of this document.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Medfly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

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 process required by Executive Order 12866.

This action amends the Medfly regulations by adding an area in Hillsborough County, revising the entry for Manatee County, and adding an area in Orange County, FL, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from the quarantined areas.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our 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 inconsistent 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.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have

been prepared for this rule. The site specific environmental assessment and programmatic Medfly environmental impact statement provide a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This 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 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantining, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–3, paragraph (c), the entry for Florida is amended by adding entries for Hillsborough and Orange Counties and revising the entry for Manatee County to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

FLORIDA

Hillsborough County. That portion of Hillsborough County beginning at the mouth of the Cockroach Creek in the Cockroach Bay; then south along the shoreline of the Cockroach Creek to Valroy Road; then east along Valroy Road to I–75; then north along I–75 to the Little Manatee River; then east along the shoreline of the Little Manatee River to the section line dividing sections 26 and 27, T. 32 S., R. 19 E.; then north along the section line dividing sections 26 and 27, T. 32 S., R. 19 E., to the section line dividing sections 22 and 23, T. 32 S., R. 19 E. (also known as S.E. 36th Street); then north along the section line dividing sections 22 and 23, T. 32 S., R. 19 E., (also known as S.E. 36th Street) to the section line dividing sections 14 and 15, T. 32 S., R. 19 E.; then north along the section line dividing sections 14 and 15, T. 32 S., R. 19 E. to I–75; then north along I–75 to N.E. 19th Avenue; then west along N.E. 19th Avenue to the section line dividing sections 34 and 35, T. 31 S., R. 19 E.; then north along the section line dividing sections 34 and 35, T. 31 S., R. 19 E., through sections 26 and 27, sections 22 and 23, and sections 14 and 15, T. 31 S., R. 19 E., to U.S. Highway 41; then north along U.S. Highway 41 to Big Bend Road (State Road 672); then west along Big Bend Road (State Road 672) to its end; then west along an imaginary line to the shoreline of the Tampa Bay; then south and west along the shoreline of the Tampa Bay (including all land masses to the east of the Tampa Bay) to the shoreline of the Cockroach Bay; then south and east along the shoreline of the Cockroach Bay to the point of beginning.

* * * * *

Manatee County. That portion of Manatee County beginning at the intersection of U.S. Highway 41 and U.S. Highway 301; then south along U.S. Highway 301 to West 49th Street; then west along West 49th Street to 5th Avenue West; then south along 5th Avenue West to 33rd Street West; then west along 33rd Street West to West 8th Avenue; then south along West 8th Avenue to Business U.S. Highway 41 (also known as West 8th Avenue); then south along Business U.S. Highway 41 (also known as West 8th Avenue), crossing the Green Bridge across the Manatee River until Business U.S. Highway 41 (also known as West 8th Avenue) becomes West 9th Street; then south along West 9th Street to 17th Avenue West; then west along 17th Avenue West to 26th Street West; then west along 26th Street West along an imaginary line to the shoreline of Palma Sola Bay; then northwest along an imaginary line through Palma Sola Bay to the southern shoreline of Perico Bayou, which separates Perico Island from the mainland; then along the eastern shoreline of Perico Bayou, to Tampa Bay; then east along the northern shoreline of the mainland to a point due south of the westernmost end of Snead Island; then north from this point along an imaginary line to Snead Island; then northeast along an imaginary line to the western most land mass on the southern end of Sunshine Skyway (U.S. Highway 19); then east and south along Sunshine Skyway (U.S. Highway 19) until it merges with U.S. Highway 41; then south along U.S. Highway 41 to the point of beginning.

Orange County. That portion of Orange County beginning at the intersection of the Lake/Orange County line and Jones Avenue; then east along Jones Avenue to Sand Farm Road; then north along Sand Farm Road to Sadler Avenue (State Road 448); then east along Sadler Avenue (State Road 448) to U.S. Highway 441; then north along U.S. Highway 441 to Wadsworth Road; then east along Wadsworth Road to its end; then east along the section line dividing sections 4 and 9 and sections 3 and 10, T. 20 S., R. 27 E., to Roundlake Road; then south along Roundlake Road to Ondich Road; then east along Ondich Road to Plymouth-Sorrento Road; then east across Plymouth-Sorrento Road to Haas Road; then east along Haas Road to Foliage Way; then south along Foliage Way to Kelly Park Road; then east along Kelly Park Road to Rock Springs Road (State Road 435); then south along Rock Springs Road (State Road 435) to Myrtle Street; then west along Myrtle Street to Hawthorn Avenue; then south along Hawthorn Avenue to 4th Street; then west along 4th Street to Bradshaw Road; then south along Bradshaw Road to Ocoee-Apopka Road; then south along Ocoee-Apopka Road to Harmon Road; then west along Harmon Road to Binion Road; then south along Binion Road to the section line dividing sections 19 and 30, T. 21 S., R. 28 E.; then west along the section line dividing sections 19 and 30, T. 21 S., R. 28 E., to the section line dividing sections 24 and 25, T. 21 S., R. 27 E.; then west along the section line dividing sections 24 and 25, T. 21 S., R. 27 E., to the shoreline of Lake Apopka; then north and west along the shoreline of Lake Apopka to the Orange/Lake

County line; then north along the Orange/Lake County line to the point of beginning.

Done in Washington, DC, this 7th day of August 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–21369 Filed 8–12–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 95–078–2]

RIN 0579–AA74

Humane Treatment of Dogs; Tethering

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for the humane treatment of dogs under the Animal Welfare Act by removing the provisions for tethering dogs as a means of primary enclosure. Our experience in enforcing the Animal Welfare Act has led us to conclude that permanently tethering a dog as a means of primary enclosure is not a humane practice that is in the animal's best interests. Temporarily tethering a dog due to health or other reasons would be permitted if the licensee obtains the approval of the Animal and Plant Health Inspection Service. This action will help ensure that dogs in facilities regulated under the Animal Welfare Act will be treated in a manner that is consistent with the animals' best interests.

EFFECTIVE DATE: September 12, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Smith, Staff Animal Health Technician, Animal Care, APHIS, suite 6D02, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–4972, or e-mail: snsmith@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3. Subpart A of 9 CFR part 3 (referred to below as the regulations) contains requirements concerning dogs and cats.

On July 2, 1996, we published in the **Federal Register** (61 FR 34386–34389, Docket No. 95–078–1) a proposal to amend the regulations by removing the option for facilities to use tethering as a means of primary enclosure. In the same document, we proposed to amend the regulations by revising the temperature requirements for indoor, sheltered, and mobile and traveling housing facilities, and for primary conveyances used in transportation, to require that the ambient temperature must never exceed 90 °F (32.2 °C) when dogs or cats are present.

We solicited comments concerning our proposal for 60 days ending September 3, 1996. We received 54 comments by that date. Many of the comments we received on the proposed rule expressed concerns with the proposal to revise the temperature requirements. This final rule concerns only the part of the proposal to remove tethering as a means of primary enclosure. We are still reviewing the issues concerning the effects of temperature on dogs and cats. If we take any further action regarding temperature, we will publish the appropriate document in the **Federal Register**.

Thirty-three of the comments received on the proposed rule addressed the part of the proposal to remove tethering as a means of primary enclosure. These comments were from dog breeders, humane organizations, a veterinarian, pet industry associations, an animal feed industry association, pharmaceutical companies, a medical research association, a Federal government agency, and other interested individuals. Nine of the comments supported the proposal; 14 comments opposed the proposal; 1 comment did not oppose the proposal, but had recommendations concerning the proposal's Initial Regulatory Flexibility Analysis; and 9 comments expressed neither support nor opposition, but stated that the provisions of the proposal should be extended to apply to anyone who owns dogs, instead of only to licensed breeders and dealers. The comments are discussed below by topic.

Currently, the regulations provide that dogs in outside housing facilities regulated under the AWA may be kept on tethers as a means of primary enclosure. We proposed to remove this provision. Several commenters who supported the proposed rule stated that, while they believe tethering should not be used as a primary enclosure, there are situations when tethering is useful for short intervals. For example, the commenter said an owner may put a dog on a tether while cleaning its pen, to isolate the dog for health reasons, or to restrain an aggressive dog. The commenters recommended that we state explicitly in the regulations that tethering is prohibited as a means of primary enclosure, and clarify in the regulations when tethering would be permissible.

We agree that it would be more clear to specifically state in the regulations that permanent tethering is prohibited as a means of primary enclosure. Therefore, we are adding a new paragraph (c)(4) to § 3.6 of the regulations to state that tethers are prohibited for use as primary enclosures. However, we realize that there may be times when it would be appropriate, and in the dog's best interests, to put a dog on a tether temporarily, ranging from a few minutes while the dog's pen is cleaned to several days to isolate an animal for health reasons. If we stated in the regulations when tethering would be permitted, we would invariably fail to include some circumstance. Further, while tethering may be appropriate for one dog under a specific circumstance, it may not be appropriate for another dog under the same circumstance. Therefore, we are also adding a provision in new paragraph (c)(4) to state that a licensee must obtain the approval of the Animal and Plant Health Inspection Service (APHIS) to temporarily tether a dog at the licensee's facility. This safeguard will give APHIS the opportunity to evaluate on a case-by-case basis the appropriateness of temporarily tethering a dog in order to ensure that any temporary tethering of a dog is in the animal's best interests.

A licensee may obtain verbal approval from an APHIS inspector to temporarily tether a dog for a period of 3 days or less. If a licensee intends to regularly tether a dog for periods of less than 3 days in order to conduct a regular activity (for example, a licensee intends to tether a dog every day for 20 minutes while the dog's primary enclosure is being cleaned), the licensee will only have to obtain verbal approval for such tethering one time. If a licensee intends to temporarily tether a dog for a period to exceed 3 days, the licensee must obtain written approval from the APHIS Animal Care Regional Office for the region in which the licensee operates.

One commenter asked us to specify that, if an inspector finds a dog to be temporarily tethered, the inspector should ask the licensee to show him or her the dog's primary enclosure. The