

# Rules and Regulations

Federal Register

Vol. 64, No. 199

Friday, October 15, 1999

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 99-044-2]

#### Oriental Fruit Fly; Removal of Quarantined Area

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Oriental fruit fly regulations by removing the quarantine on a portion of Hillsborough County, FL, and by removing the restrictions on the interstate movement of regulated articles from that area. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from this portion of Hillsborough County, FL, and that the quarantine and restrictions are no longer necessary. This portion of Hillsborough County, FL, was the last remaining area in Florida quarantined for Oriental fruit fly. Therefore, as a result of this action, there are no longer any areas in Florida quarantined for Oriental fruit fly.

**DATES:** This interim rule was effective October 7, 1999. We invite you to comment on this docket. We will consider all comments that we receive by December 14, 1999.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 99-044-2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 99-044-2.

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 rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, Operations Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-8247.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruits, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks that can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93-10 (referred to below as the regulations), impose restrictions on the interstate movement of regulated articles from quarantined areas to prevent the spread of the Oriental fruit fly to noninfested areas of the United States. The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

In an interim rule effective on June 9, 1999, and published in the **Federal Register** on June 15, 1999 (64 FR 31963-31964, Docket No. 99-044-1), we quarantined a portion of Hillsborough County, FL, and restricted the interstate movement of regulated articles from the quarantined area.

Based on trapping surveys conducted by inspectors of Florida State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the

Oriental fruit fly has been eradicated from the quarantined portion of Hillsborough County, FL. The last finding of the Oriental fruit fly in this area was June 11, 1999.

Since then, no evidence of Oriental fruit fly infestation has been found in this area. Based on our experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that the Oriental fruit fly no longer exists in Hillsborough County, FL. Therefore, we are removing Hillsborough County, FL, from the list of quarantined areas in § 301.93-3(c). Oriental fruit fly infestations are not known to exist anywhere else in the continental United States except in a portion of Los Angeles, CA.

#### Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove an unnecessary regulatory burden on the public. A portion of Hillsborough County, FL, was quarantined due to the possibility that the Oriental fruit fly could be spread from this area to noninfested areas of the United States. Since this situation no longer exists, immediate action is necessary to remove the quarantine on Hillsborough County, FL, and to relieve the restrictions on the interstate movement of regulated articles from that area.

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 this action effective less than 30 days after publication. 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**. The document 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 interim rule relieves restrictions on the interstate movement of regulated articles from a portion of Hillsborough County, FL.

Within the previously quarantined portion of Hillsborough County, FL, there are approximately 125 entities that will be affected by this rule. All would be considered small entities. These include 1 transportation terminal, 75 fruit stands, 15 mobile vendors, 20 food stores, 1 common carrier, and 13 nurseries. These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of Florida. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate was minimized by the availability of various treatments that, in most cases, allowed these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### **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 interim 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.

#### **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 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 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. Section 301.93–3, paragraph (c), the entry for Florida is removed.

Done in Washington, DC, this 7th day of October 1999.

**Bobby R. Acord,**

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

[FR Doc. 99–27001 Filed 10–14–99; 8:45 am]

BILLING CODE 3410–34–U

#### **DEPARTMENT OF AGRICULTURE**

#### **Animal and Plant Health Inspection Service**

#### **9 CFR Part 94**

[Docket No. 97–118–2]

#### **Change in Disease Status of Luxembourg Because of BSE**

**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 added Luxembourg to the list of regions where bovine spongiform encephalopathy exists. We took this action because bovine spongiform encephalopathy was detected in a cow in Luxembourg. The effect of the interim rule was to prohibit the importation of ruminants that have been in Luxembourg and meat, meat products, and certain other products of ruminants that have been in Luxembourg. The interim rule was necessary to reduce the risk that bovine spongiform encephalopathy could be introduced into the United States.

**EFFECTIVE DATE:** The interim rule became effective on December 2, 1997.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Cougill, Staff Veterinarian, Animal Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3399; or e-mail: john.w.cougill@usda.gov.

**SUPPLEMENTARY INFORMATION:**

#### **Background**

In an interim rule effective December 2, 1997, and published in the **Federal**

**Register** on December 17, 1997 (62 FR 65999–66001, Docket No. 97–118–1), we amended the regulations in 9 CFR part 94 by adding Luxembourg to the list in § 94.18 of regions where bovine spongiform encephalopathy (BSE) exists. We took this action because BSE was detected in a cow born in Luxembourg.

Comments on the interim rule were required to be received on or before February 17, 1998. 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 Orders 12866 and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

#### **Regulatory Flexibility Act**

This rule affirms an interim rule that amended the regulations by adding Luxembourg to the list of regions where BSE exists. We took this action because BSE was detected in a cow in Luxembourg. The effect of the interim rule was to prohibit the importation of ruminants that have been in Luxembourg and meat, meat products, and certain other products of ruminants that have been in Luxembourg. The interim rule was necessary to reduce the risk that BSE could be introduced into the United States.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

BSE is a slowly progressing, fatal, degenerative disease that affects the central nervous system of cattle. The disease was first diagnosed in 1986 in Great Britain, where it is sometimes called “mad cow disease.” Infected animals may display changes in temperament, abnormal posture, incoordination and difficulty in rising, decreased milk production, and loss of body condition despite continued appetite. The causative agent of BSE is not completely characterized, and there is no treatment for the disease. At this time, the disease is not known to exist in the United States. There is no vaccine to prevent BSE nor is there a test to detect the disease in live animals. Given these factors, the import restrictions imposed by the interim rule are the most effective means available for ensuring that BSE does not enter the United States from Luxembourg.

Preventing the introduction of BSE into the United States is critical. In