

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Part 94****[Docket No. 01-065-1]****Change in Disease Status of Greece Because of BSE****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations by adding Greece to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in a native-born animal in that region. Greece is currently listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States. Therefore, the effect of this action is a continued restriction on the importation of ruminants that have been in Greece and meat, meat products, and certain other products of ruminants that have been in Greece. This action is necessary in order to update the disease status of Greece regarding bovine spongiform encephalopathy.

**DATES:** This interim rule is effective retroactively to July 2, 2001. We invite you to comment on this docket. We will consider all comments that we receive by December 31, 2001.

**ADDRESSES:** Please send four copies of your comment (an original and three copies) to: Docket No. 01-065-1, 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. 01-065-1.

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. Donna Malloy, Senior Staff Veterinarian, National Center for Import and Export, Products Program, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737-1231; (301) 734-3277.

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

The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of cattle and is not known to exist in the United States. It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants, are imported into the United States and are fed to ruminants in the United States. BSE could also become established in the United States if ruminants with BSE are imported into the United States.

Sections 94.18, 95.4, and 96.2 of the regulations prohibit or restrict the importation of certain meat and other animal products and byproducts from ruminants that have been in regions in which BSE exists or in which there is an undue risk of introducing BSE into the United States. Paragraph (a)(1) of § 94.18 lists the regions in which BSE exists. Paragraph (a)(2) lists the regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because the regions have inadequate surveillance. Paragraph (b) of § 94.18 prohibits the importation of fresh, frozen, and chilled meat, meat products, and most other edible products of ruminants that have been in any region listed in paragraphs (a)(1) or (a)(2). Paragraph (c) of § 94.18 restricts the importation of gelatin derived from ruminants that have been in any of these regions. Section 95.4 prohibits or restricts the importation of certain byproducts from ruminants that have been in any of those regions, and § 96.2 prohibits the importation of casings, except stomach casings, from ruminants that have been in any of these regions. Additionally, the regulations in 9 CFR

part 93 pertaining to the importation of live animals provide that the Animal and Plant Health Inspection Service may deny the importation of ruminants from regions where a communicable disease such as BSE exists and from regions that present risks of introducing communicable diseases into the United States (see § 93.404(a)(3)).

Currently, Greece is among the regions listed in § 94.18(a)(2), which are regions that present an undue risk of introducing BSE into the United States. However, on July 2, 2001, a case of BSE was confirmed in a native-born animal in Greece. Therefore, in order to update the disease status of this region regarding BSE, we are amending the regulations by removing Greece from the list in § 94.18(a)(2) of regions that present an undue risk of introducing BSE into the United States and adding Greece to the list in § 94.18(a)(1) of regions where BSE is known to exist. The effect of this action is a continued restriction on the importation of ruminants that have been in Greece and on the importation of meat, meat products, and certain other products and byproducts of ruminants that have been in Greece. We are making these amendments effective retroactively to July 2, 2001, which is the date that BSE was confirmed in a native-born animal in that region.

**Emergency Action**

This rulemaking is necessary on an emergency basis to update the disease status of Greece regarding BSE. 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 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.

We are amending the regulations by adding Greece to the list of regions where BSE exists because the disease

has been detected in native-born animals in that region. Greece is currently listed among the regions that present an undue risk of introducing BSE into the United States. Regardless of which of the two lists a region is on, the same restrictions apply to the importation of ruminants and meat, meat products, and most other products and byproducts of ruminants that have been in the region. Therefore, this action, which is necessary in order to update the disease status of Greece regarding BSE, will not result in any change in the restrictions that apply to the importation of ruminants and meat, meat products, and certain other products and byproducts of ruminants that have been in Greece.

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 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 retroactive effect to July 2, 2001; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### **Paperwork Reduction Act**

This interim 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 9 CFR Part 94**

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

#### **PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS**

1. The authority citation for part 94 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

#### **§ 94.18 [Amended]**

2. Section 94.18 is amended as follows:

- a. In paragraph (a)(1), by adding, in alphabetical order, the word “Greece.”.
- b. In paragraph (a)(2), by removing the word “Greece.”.

Done in Washington, DC, this 24th day of October 2001.

**Bobby R. Acord,**

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

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**BILLING CODE 3410-34-U**

Section 3164 directed the Secretary of Energy to establish a program to ensure that DOE employees or DOE contractor employees engaged in defense activities may not be discharged, demoted, or otherwise discriminated against as a reprisal for making protected disclosures. The Secretary was required by section 3164(g) to prescribe regulations to ensure the security of any information disclosed under the program (42 U.S.C. 7239(g)). To qualify as a “protected disclosure” of classified or other controlled information, a covered employee must take appropriate steps to protect the security of the information in accordance with guidance provided by the DOE Inspector General, and reveal the information only to a person or entity specified in the statute (42 U.S.C. 7239(c)).

DOE provided a 30-day public comment period for the interim final rule, and the rule was to become effective on February 20, 2001. In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled “Regulatory Review Plan,” published in the **Federal Register** on January 24, 2001, (66 FR 7702) DOE temporarily delayed for 60 days the effective date of the interim final rule (66 FR 8747, February 2, 2001). Upon completion of its review of the regulation, DOE published a notice in the **Federal Register** on May 10, 2001, (66 FR 23833) confirming the effective date of the interim final rule as April 23, 2001.

#### **II. Discussion of Public Comment**

DOE received one comment during the public comment period provided for the interim final rule. The Special Counsel of the U.S. Office of Special Counsel stated her concern that the interim final rule failed to include any reference to section 3164(l) of the NDAA for FY 2000, which provides that the protections of section 3164 are independent of, and not subject to any limitations that may be provided in, the Whistleblower Protection Act of 1989 (Pub. L. 101-12) or any other law that may provide protection for disclosures of information by an employee of DOE or of a DOE contractor. The Special Counsel requested DOE to clarify this issue in the final rule by making clear that whistleblower disclosures of classified or controlled information by DOE employees, including disclosures to the Special Counsel or to the DOE Inspector General, are also protected under the Whistleblower Protection Act of 1989.

DOE agrees that the scope of the section 3164 whistleblower protection program should be addressed in the

#### **DEPARTMENT OF ENERGY**

#### **10 CFR Part 1044**

**[Docket No. SO-RM-00-3164]**

**RIN 1992-AA26**

#### **Office of Security and Emergency Operations; Security Requirements for Protected Disclosures Under Section 3164 of the National Defense Authorization Act for Fiscal Year 2000**

**AGENCY:** Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) adopts, with minor change, an interim final rule published on January 18, 2001, which prescribed the security procedures that a DOE employee or DOE contractor employee, including an employee or contractor employee of the National Nuclear Security Administration, must follow to make a protected disclosure of classified or other controlled information under section 3164 of the National Defense Authorization Act for Fiscal Year 2000.

**EFFECTIVE DATE:** This final rule is effective November 29, 2001.

**FOR FURTHER INFORMATION CONTACT:** Raymond C. Holmer, Office of Safeguards and Security (SO-211.3), U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874, (301) 903-7325 or by electronic mail [raymond.holmer@hq.doe.gov](mailto:raymond.holmer@hq.doe.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction**

On January 18, 2001, DOE published an interim final rule in the **Federal Register** (66 FR 4639). The interim final rule added a new part 1044 to title 10 of the Code of Federal Regulations to establish security requirements for the disclosure of classified and other controlled information under section 3164 of the National Defense Authorization Act for Fiscal Year 2000 (NDAA for FY 2000) (42 U.S.C. 7239).