

Rules and Regulations

Federal Register

Vol. 66, No. 212

Thursday, November 1, 2001

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–102–1]

Oriental Fruit Fly; Designation 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 quarantining a portion of San Diego County, CA, and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

DATES: This interim rule was effective October 26, 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. 01–102–1, 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. 01–102–1.

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: Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, vegetables, and berries. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks, which 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), were established to prevent the spread of the Oriental fruit fly to noninfested areas of the United States. Section 301.93–3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93–3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles; and (2) the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

Recent trapping surveys by inspectors of California State and county agencies

and by inspectors of the Animal and Plant Health Inspection Service (APHIS) reveal that a portion of San Diego County, CA, is infested with the Oriental fruit fly. The Oriental fruit fly is not known to exist anywhere else in the continental United States except in San Bernardino County, CA.

State agencies in California have begun an intensive Oriental fruit fly eradication program in the quarantined area in San Diego County. Also, California has taken action to restrict the intrastate movement of regulated articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly to other States, we are amending the regulations in § 301.93–3 by designating a portion of San Diego County, CA, as a quarantined area for the Oriental fruit fly. The quarantined area is described in the rule portion of this document.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Oriental fruit fly from spreading to noninfested areas of the United States. 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.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not

have a significant economic impact on a substantial number of small entities or publish a 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 interim rule. The site-specific environmental assessment provides a basis for the conclusion that the implementation of integrated pest management to eradicate the Oriental fruit fly will not have a significant impact on human health or 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), as amended (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**. The environmental assessment and finding

of no significant impact may also be viewed on the Internet at <http://www.aphis.usda.gov/ppd/es/ppq/offsd.pdf>.

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 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. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.93–3, paragraph (c), the entry for California is amended by adding, in alphabetical order, an entry for San Diego County to read as follows:

§ 301.93–3 Quarantined areas.

*	*	*	*	*
(c)	*	*	*	*
	California			
*	*	*	*	*

San Diego County. That portion of the county beginning at the intersection of State Highway 94 and Sweetwater Springs Boulevard; then south along Sweetwater Springs Boulevard to its intersection with U.S. Elevator Road; then south from the intersection of Sweetwater Springs Boulevard and U.S. Elevator Road along an imaginary line to the intersection of ProctorValley Road and Lane Avenue; then south on Lane Avenue to Otay Lakes Road; then west on Otay Lakes Road to Telegraph Canyon Road; then west on Telegraph Canyon Road to Hilltop Drive; then north on Hilltop Drive to J Street; then west on J Street to 4th Avenue; then north on 4th Avenue to H Street; then west on H Street to Broadway; then north on Broadway to E Street; then west on E Street to Interstate Highway 5; then north on Interstate Highway 5 to State Highway 15; then north on State Highway 15 to State Highway 94; then east on State Highway 94 to Interstate

Highway 805; then north on Interstate Highway 805 to Home Avenue; then northeast on Home Avenue to Euclid Avenue; then north on Euclid Avenue to University Avenue; then east on University Avenue to Massachusetts Avenue; then south on Massachusetts Avenue to State Highway 94; then east on State Highway 94 to the point of beginning.

Done in Washington, DC, this 26th day of October 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–27460 Filed 10–31–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 01–055–1]

States Approved To Receive Stallions and Mares From CEM-Affected Regions; Rhode Island

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the animal importation regulations by adding Rhode Island to the list of States approved to receive certain stallions and mares imported into the United States from regions affected with contagious equine metritis (CEM). We are taking this action because Rhode Island has entered into an agreement with the Administrator of the Animal and Plant Health Inspection Service to enforce its State laws and regulations to control CEM and to require inspection, treatment, and testing of horses, as required by Federal regulations, to further ensure the horses' freedom from CEM. This action relieves unnecessary restrictions on the importation of mares and stallions from regions where CEM exists.

DATES: This rule will be effective on December 31, 2001 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before December 3, 2001.

ADDRESSES: Please send four copies (an original and three copies) of your comments or notice of intent to submit adverse comments to: Docket No. 01–055–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03,