

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01-080-2]

Oriental Fruit Fly; Removal of Quarantined Areas

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 portions of San Bernardino and San Diego Counties, CA, from the list of quarantined areas and by removing restrictions on the interstate movement of regulated articles from those areas. 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 these portions of San Bernardino and San Diego Counties, CA, and that the quarantine and restrictions are no longer necessary. These portions of San Bernardino and San Diego Counties, CA, were the last remaining areas in California quarantined for the Oriental fruit fly. Therefore, as a result of this action, there are no longer any areas in the continental United States quarantined for the Oriental fruit fly.

DATES: This interim rule is effective May 15, 2002. We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 15, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01-080-2,

Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 01-080-2. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01-080-2" on the subject line.

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 Knight, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1231; (301) 734-8039.

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), restrict 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 August 29, 2001, and published in the **Federal Register** on September 5, 2001 (66 FR 46365-46366, Docket No. 01-080-1), we

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quarantined a portion of San Bernardino County, CA, and restricted the interstate movement of regulated articles from the quarantined area.

Subsequently, in an interim rule effective on October 26, 2001, and published in the **Federal Register** on November 1, 2001 (66 FR 55067-55068, Docket No. 01-102-1), we quarantined a portion of San Diego County, CA, and restricted the interstate movement of regulated articles from that quarantined area.

Based on trapping surveys conducted by inspectors of California 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 portions of these two counties. The last finding of Oriental fruit fly in the San Bernardino County quarantined area was October 17, 2001, while the last such finding in the San Diego County quarantined area was September 25, 2001.

Since then, no evidence of Oriental fruit fly infestation has been found in these areas. 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 San Bernardino County or San Diego County, CA. Therefore, we are removing both counties from the list of quarantined areas in § 301.93-3(c). With the removal of San Bernardino and San Diego Counties, CA, from that list, there are no longer any areas in the continental United States quarantined for the Oriental fruit fly.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. Portions of San Bernardino and San Diego Counties, CA, were quarantined due to the possibility that the Oriental fruit fly could be spread from those areas to noninfested areas of the United States. Since we have concluded that the Oriental fruit fly no longer exists in those counties, immediate action is necessary to remove the quarantines on San Bernardino and San Diego Counties, CA, and to relieve the restrictions on the interstate movement of regulated articles from those areas. 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 action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). 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 action amends the Oriental fruit fly regulations by removing portions of San Bernardino and San Diego Counties, CA, from the list of quarantined areas.

County records indicate that within the quarantined portion of San Bernardino County, CA, there are 10 to 15 small growers who could be affected by the lifting of the quarantine in this interim rule. There is no commercial agricultural acreage nor any flea markets or certified farmers' markets within the area. The number of nurseries and fruit and produce dealers located within the area is presently unknown.

We expect that the effect of this interim rule on the small entities referred to above will be minimal. Small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears likely to be minimal. In addition, the effect on any small entities that may move regulated articles interstate has been minimized during the quarantine period by the availability of various treatments that allow these small entities, in most cases, to move regulated articles interstate with very little additional cost. Thus, just as the previous interim rule establishing the quarantined area in San Bernardino, CA, had little effect on the small growers in the area, the lifting of the quarantine in the current interim rule will also have little effect.

Within the quarantined area of San Diego County, CA, the State of California has identified 101 markets/produce vendors, 3 farmers' markets, 20 nurseries, and 2 growers. No data are available on how many of these entities are small.

The effect on any entities, large or small, that may move regulated articles

interstate has been minimized during the quarantine period by the availability of various treatments that allow these entities, in most cases, to move regulated articles interstate with very little additional cost. For many businesses, no additional costs have been incurred. As far as we can determine, no entities have gone out of business due to the quarantine. It is, therefore, highly unlikely that the lifting of the quarantine in San Diego County, CA, will have a significant economic effect on any entities, large or small, in that area.

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 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 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.

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) is revised to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas: There are no areas in the continental United States quarantined for the Oriental fruit fly.

Done in Washington, DC, this 9th day of May, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–12136 Filed 5–14–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–122–2]

Change in Disease Status of Slovakia and Slovenia 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 amended the regulations by adding Slovakia and Slovenia to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in native-born animals in those regions. Slovakia and Slovenia had already been listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States, so the effect of the interim rule was a continued restriction on the importation of ruminants that have been in Slovakia or Slovenia and meat, meat products, and certain other products of ruminants that have been in either of those regions. The interim rule was necessary in order to update the disease status of Slovakia and Slovenia regarding bovine spongiform encephalopathy.

EFFECTIVE DATE: The interim rule became effective on February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Sanitary Issues Management Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION: