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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 04–091–1]

Add Malaysia to List of Regions in Which Highly Pathogenic Avian Influenza Subtype H5N1 Is Considered To Exist

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning the importation of animals and animal products by adding Malaysia to the list of regions in which highly pathogenic avian influenza (HPAI) subtype H5N1 is considered to exist. We are taking this action because there has been an outbreak of HPAI subtype H5N1 in Malaysia. This action is necessary to prevent the introduction of HPAI subtype H5N1 into the United States.

DATES: This interim rule was effective August 7, 2004. We will consider all comments that we receive on or before April 4, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- **EDOCKET:** Go to <http://www.epa.gov/feddoCKET> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 04–091–1, 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. 04–091–1.

- **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. 04–091–1" on the subject line.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

Reading Room: 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.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Julie Garnier, Staff Veterinarian, Technical Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–5677.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA or the Department) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases. The regulations in 9 CFR parts 93, 94, and 95 (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 avian influenza (AI).

There are many strains of AI virus that can cause varying degrees of clinical illness in poultry such as chickens, turkeys, pheasants, quail, ducks, geese, and guinea fowl, as well as a wide variety of other birds. AI viruses can be classified into low pathogenic (LPAI) and highly pathogenic (HPAI) forms based on the severity of the illness they cause. Most AI virus strains are LPAI and typically cause little or no clinical signs in infected birds. However, some LPAI virus strains are capable of mutating under field conditions into HPAI viruses.

HPAI is an extremely infectious and fatal form of the disease for chickens. HPAI can strike poultry quickly without any infection warning signs and, once established, the disease can spread rapidly from flock to flock. HPAI viruses can also be spread by manure, equipment, vehicles, egg flats, crates, and people whose clothing or shoes have come in contact with the virus. HPAI viruses can remain viable at moderate temperatures for long periods in the environment and can survive indefinitely in frozen material. One gram of contaminated manure can contain enough virus to infect 1 million birds.

In some instances, strains of HPAI viruses can be infectious to people. Human infections with AI viruses under natural conditions have been documented in recent years. Since December 2003, a growing number of Southeast Asian countries have reported outbreaks of HPAI responsible for the deaths of millions of birds and at least 22 humans.

The rapid spread of HPAI, with outbreaks occurring at the same time in a number of regions, is historically unprecedented and of growing concern for human and animal health. According to the World Health Organization, particularly alarming is the HPAI strain of most of these outbreaks, H5N1, which has crossed the species barrier and caused severe disease, with high mortality, in humans. The current AI outbreaks have caused significant concern among health authorities worldwide because of the potential for the human and avian flu viruses to swap genes, creating a new virus to which humans would have little or no immunity.

On May 10, 2004 (69 FR 25820–25826, Docket No. 04–011–1), we published an interim rule that amended the regulations to, among other things, establish additional restrictions on the importation of birds and poultry and unprocessed bird and poultry products from regions where HPAI subtype H5N1 is considered to exist. The interim rule also added to the regulations a list of regions (Cambodia, China, Indonesia, Japan, Laos, South Korea, Thailand, and Vietnam) in which HPAI subtype H5N1 is considered to exist.

On August 19, 2004, Malaysia alerted the World Organization for Animal Health and the United States that an outbreak of HPAI subtype H5N1 had occurred in that country. The outbreak occurred in the northeastern State of Kelantan, close to the border with Thailand, a country where the presence of the disease has already been confirmed. Currently, control measures for the disease in Malaysia include depopulation of all poultry and birds within a 1-kilometer radius of the infected flock, quarantine within 10 kilometers of the infected flock, movement restrictions, and clinical surveillance in the State of Kelantan.

Therefore, in order to prevent the introduction of HPAI subtype H5N1 into the United States, we are amending the regulations by adding Malaysia to the list in § 94.6(d) of regions where HPAI subtype H5N1 exists. We are making this action effective retroactively to August 7, 2004, which is the date that Malaysian veterinary authorities estimate to be the date of primary infection. As a result of this action, the importation into the United States of birds, poultry, and unprocessed bird and poultry products from Malaysia is restricted and U.S. origin pet birds and performing or theatrical birds and poultry returning to the United States from Malaysia will be subject to additional permit and quarantine requirements.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction of HPAI subtype H5N1 into 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 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.

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 under Executive Order 12866.

This rule amends the regulations by adding Malaysia to the list of regions in which HPAI subtype H5N1 is considered to exist. This action is necessary on an emergency basis to prevent the introduction of HPAI, subtype H5N1 into the United States.

The U.S. does not recognize Malaysia as free of exotic Newcastle disease, thus the importation of poultry and non-processed poultry products from Malaysia is restricted. The United States, Canada, and Mexico imported no live poultry, poultry meat, eggs, or feathers from Malaysia in 2003/2004. The only exception was two commercial shipments, consisting of 6,791 and 9,646 pet birds, respectively, which were imported from Malaysia in October 2003 and February 2004. Both shipments consisted of assorted finches. Live birds are quarantined in U.S. ports prior to clearance for entry into the country, during which time testing for infectious diseases, including AI, takes place.

Since no live poultry or poultry products are imported from Malaysia at this time, it is unlikely that this interim rule will have any substantial effects on trade, or on small or large businesses. APHIS also does not anticipate significant changes in program operations, or effects on other Federal agencies, State governments, or local governments.

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 in conflict with this rule; (2) has retroactive effect to August 7, 2004; 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 9 CFR Part 94

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

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, 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, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 94.6 [Amended]

■ 2. In § 94.6, paragraph (d) is amended by adding the word “Malaysia,” after the word “Laos,”.

Done in Washington, DC, this 26th day of January 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–1796 Filed 1–31–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9170]

RIN 1545–BD99

Section 1374 Effective Dates; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document corrects temporary regulations (TD 9170) that were published in the **Federal Register** on Wednesday, December 22, 2004 (69 FR 76612), that provide guidance concerning the applicability of section 1374 to S corporations that acquire assets in carryover basis transactions from C corporations on or after December 27, 1994, and to certain corporations that terminate S