

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 02–096–2]

#### 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 Los Angeles and San Bernardino Counties, CA, and restricting the interstate movement of regulated articles from that 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 January 13, 2004. We will consider all comments that we receive on or before March 22, 2004.

**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. 02–096–2, 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. 02–096–2. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto: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. 02–096–2” 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 A. Knight, Senior Staff Officer, 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 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 into 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 that 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 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 interstate movement of the 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 reveal that a portion of Los Angeles and San Bernardino Counties, CA, is infested with the Oriental fruit fly.

State agencies in California have begun an intensive Oriental fruit fly eradication program in the quarantined area in Los Angeles and San Bernardino Counties. 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 noninfested areas of the United States, we are amending the regulations in § 301.93–3 by designating a portion of Los Angeles and San Bernardino Counties, CA, as a quarantined area for the Oriental fruit fly. The quarantined area is described in the rule portion of this document.

#### Prior Designation of Quarantined Area

In an interim rule effective on October 2, 2002, and published in the **Federal Register** on October 8, 2002 (67 FR 62627–62628, Docket No. 02–096–1), we amended the regulations by designating a portion of Los Angeles and San Bernardino Counties, CA, as a quarantined area. Based on trapping surveys by inspectors of California State and county agencies, the State of California lifted its interior quarantine on December 12, 2002, based on the determination that Oriental fruit fly had been eradicated from the quarantined area. In these types of situations, we normally follow the State's action by lifting the corresponding Federal quarantine on the particular area; however, in this case that did not occur. Therefore, in this interim rule, we are removing the quarantined area established in our October 2002 interim rule. The description of the new quarantined area discussed previously replaces the description of the October 2002 quarantined area in § 301.93–3(c).

#### 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 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 Oriental fruit fly regulations by adding a portion of Los Angeles and San Bernardino Counties, CA, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from a quarantined area.

County records indicate there are approximately 29 acres of fruits and vegetables, 6 farmers markets, 1 food bank, 2 fruit haulers, 15 growers, 83 markets and produce vendors, 4 packers, 60 nurseries, and 26 swap meets within the quarantined area that may be affected by this rule.

We expect that any 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 those entities appears to be minimal. The effect on any small entities that may move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow 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 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 and 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 in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this document). In addition, copies may be obtained from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### **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. 7701–7772; 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:

#### **CALIFORNIA**

*Los Angeles and San Bernardino Counties.* That portion of Los Angeles and San Bernardino Counties in the Ontario area bounded by a line as follows: Beginning at the intersection of the San Antonio Channel and the State Route 210 Freeway; then east on State Route 210 Freeway to Etiwanda Avenue; then south on Etiwanda Avenue to South Etiwanda Avenue; then south on South Etiwanda Avenue to Philadelphia Street; then west on Philadelphia Street to South Milliken Avenue; then south on South Milliken Avenue to Hamner Avenue; then south on Hamner Avenue to Edison Avenue; then west on Edison Avenue to Archibald Avenue; then south on Archibald Avenue to the San Bernardino County line; then southwest, south, and west along the San Bernardino County line to the Chino Valley Freeway; then northwest on the Chino Valley Freeway to Pine Avenue; then west on Pine Avenue to Butterfield Ranch Road; then northwest on Butterfield Ranch Road to Soquel Canyon Parkway; then southwest and west on Soquel Canyon Parkway to Pipeline Avenue; then north on Pipeline Avenue to Woodview Road; then southwest on Woodview Road to Peyton Drive; then north on Peyton Drive to Chino Hills Parkway; then southwest, northwest, and north on Chino Hills Parkway to Rio Rancho Road; then southeast, northeast, and east on Rio Rancho Road to East Philadelphia Street; then east on East Philadelphia Street to Towne Avenue; then north on Towne Avenue to Interstate 10; then northeast and east on Interstate 10 to the San Antonio Channel; then northeast along the San Antonio Channel to the point of beginning.

Done in Washington, DC, this 13th day of January 2004.

**Bobby R. Acord,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04-1067 Filed 1-16-04; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001-NM-167-AD; Amendment 39-13433; AD 2004-01-19]

RIN 2120-AA64

#### **Airworthiness Directives; McDonnell Douglas Model MD-11 and -11F Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 and -11F airplanes, that requires replacement of the wire assembly connectors of the bag rack lighting with new, moisture-resistant connectors and reidentification of the bag racks. This action is necessary to prevent arcing of the wire assembly connectors of the overhead storage bin, and service module and bin extension assemblies, and consequent smoke/fire in the cabin. This action is intended to address the identified unsafe condition.

**DATES:** Effective February 24, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 24, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-

130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

#### **SUPPLEMENTARY INFORMATION:** A

proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 and -11F airplanes was published in the **Federal Register** on July 24, 2003 (68 FR 43681). That action proposed to require replacement of the wire assembly connectors of the bag rack lighting with new, moisture-resistant connectors and reidentification of the bag racks.

#### **Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

#### **Requests To Revise Applicability**

Two commenters request that the applicability of the proposed AD be revised to exclude airplanes with certain manufacturer's fuselage numbers (MSN) that have been modified from a passenger-to-freighter configuration. One commenter notes that the proposed AD affects both Model MD-11 (passenger) and -11F (freighter) airplanes, as listed in Boeing Alert Service Bulletin MD11-33A064, dated March 6, 2002. The commenters also note that the effectivity listing of the referenced service bulletin includes manufacturer's fuselage numbers (MFN) 530, 537, 540, 547, 550, 554, and 574. The commenters state that, at the time the service bulletin was written, these MFNs were passenger airplanes; however, Boeing has since converted these MFNs to freighters. The commenters conclude that these MFNs no longer have approved configurations that include the components affected by the proposed AD.

We agree. We have revised the applicability to exclude airplanes that have been converted from a passenger-to-freighter configuration, on which passenger configuration equipment has been removed per Boeing-approved drawings after March 6, 2002 (the issue date of Boeing Alert Service Bulletin MD11-33A064).

#### **Conclusion**

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has

determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

#### **Cost Impact**

There are approximately 111 Model MD-11 and -11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 26 airplanes of U.S. registry will be affected by this AD.

For Group 1 airplanes identified in the referenced service bulletin, it will take approximately 11 work hours per airplane to accomplish the required actions, at an average labor rate of \$65 per work hour. Required parts will cost between \$1,140 and \$1,406 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$1,855 and \$2,121 per airplane.

For Group 2 airplanes identified in the referenced service bulletin, it will take approximately 13 work hours per airplane to accomplish the required actions, at an average labor rate of \$65 per work hour. Required parts will cost between \$1,140 and \$1,406 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$1,985, and \$2,251 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD.

#### **Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a