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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97-056-2]

Mediterranean Fruit Fly; Addition to Quarantined Areas; Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, Agriculture.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding a portion of Hillsborough County, FL, to the list of quarantined areas, restricting the interstate movement of regulated articles from the quarantined area, and adding eggplant, other than commercially-produced eggplant, to the list of regulated articles. These actions are necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the continental United States.

DATES: Interim rule effective June 16, 1997. Consideration will be given only to comments received on or before August 19, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97-056-2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 97-056-2. Comments received may be inspected 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 comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737-1236, (301) 734-8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78-10; referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

Recent trapping surveys by inspectors of Florida State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of Medfly has occurred in a portion of Hillsborough County, FL.

The regulations in § 301.78-3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Medfly. The boundaries lines, for a portion of a State being designated as quarantined, are set up approximately four-and-one-half-miles from the

detection sights. The boundary lines may vary due to certain factors such as the location of hosts, the location of transportation centers such as bus stations and airports, the patterns of persons moving in that State, the number and patterns of distribution of the Medfly, and the use of clearly identifiable lines for the boundaries.

In accordance with these criteria and the recent Medfly findings described above, we are amending § 301.78-3 by adding a portion of Hillsborough County in Florida. The new quarantined area is described in the rule portion of this document.

Regulated Articles

Section 301.78-2 designates as regulated articles a number of berries, fruits, nuts, and vegetables, and soil within the drip line of plants that produce the berries, fruits, nuts, and vegetables. Based on research and experience, the articles listed in § 301.78-2(a) as regulated articles are articles that are likely to cause the spread of the Medfly.

We are proposing to add eggplant, other than commercially-produced eggplant, to the list of articles regulated for Medfly. Review of the scientific literature reveals that fully ripe eggplant can be a host of Medfly. Commercially-produced eggplant—eggplant identified by an inspector as having been produced for sale and distribution in mass markets, is harvested at a stage of development when susceptibility to Medfly infestation is unlikely.

Wild or "backyard" produce, including eggplant, is generally grown and handled under very different conditions than commercially-produced fruits and vegetables (e.g., wild or backyard produce usually involves different varieties of produce and different cultivating techniques, little or no pest control, and a lack of sanitary controls during growing and packing, such as removal and destruction of overripe and damaged fruit). As a result, there is reason to believe that wild or backyard produce presents a greater pest risk than commercially produced fruits and vegetables. Therefore, we are amending the list of regulated articles in § 301.78-2(a) by adding "Eggplant (*Solanum melongena* L.), other than commercially-produced." We are also adding a definition for "commercially-produced" to clarify the difference

between backyard produce and commercially grown produce.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Medfly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. 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**. It will include a discussion of any comments we receive and any amendment 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 Medfly regulations by quarantining an area in Hillsborough County in Florida, restricting the interstate movement of regulated articles from the quarantined area, and adding eggplant, other than commercially-produced eggplant, to the list of regulated articles.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our 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 rule. The site specific environmental assessment and programmatic Medfly environmental impact statement provide a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would 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) (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, 14 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**.

Paperwork Reduction Act

This 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, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–1 is amended by adding a definition, in alphabetical order, to read as follows:

§ 301.78–1 Definitions.

* * * * *

Commercially-produced. Fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: quantity of produce, monocultural practices, pest management programs, good sanitation practices including destruction of culls, type of packaging, identification of grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.

* * * * *

§ 301.78–2 [Amended]

3. In § 301.78–2, paragraph (a) is amended by adding “Eggplant (*Solanum melongena* L.), other than commercially-produced eggplant” immediately after “Date (*Phoenix dactylifera*)”.

4. In § 301.78–3, paragraph (c) is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas:

FLORIDA

Hillsborough County. That portion of Hillsborough County beginning at the intersection of Knights Griffin Road and State Road 39; then west along Knights Griffin Road to Stacy Road (including properties on the north side of Knights Griffin Road); then north along Stacy Road to U.S. 301 (including properties on the west side of Stacy Road); then south along U.S. 301 to East Fowler Avenue (582); then west along east Fowler Avenue (582) to I–75; then north along I–75 to R. 19 E., T. 27 S., section line dividing sections 14 and 23; then west along the section line dividing sections 14 and 23, sections 15 and 22, sections 16 and 21, sections 17 and 20, and sections 18 and 19 to Debuel Road; then west along Debuel Road and its extension (including the properties on the north side of Debuel Road) to R. 18 E., T. 27 S., section line dividing sections 13 and 24, and sections 14 and 23; then west along R. 18 E., T. 27 S., section line dividing sections 13 and 24, and 14 and 23 to Van Dyke Road; then west along Van Dyke Road (including the properties on the north side of Van Dyke Road) to Veterans Expressway

(589); then south along Veterans Expressway (589) until it becomes Eisenhower Boulevard; then south along Eisenhower Boulevard to Memorial Highway; then south along Memorial Highway to Kennedy Boulevard; then east along Kennedy Boulevard (including the properties on the south side of Kennedy Boulevard) to West Shore Boulevard; then south along West Shore Boulevard (including properties on the west side of West Shore Boulevard) to Gandy Boulevard; then east along Gandy Boulevard and its extension (including the properties on the south side of Gandy Boulevard and its extension) to the water edge of Hillsborough Bay; then south, east, and north along the water edge of Hillsborough Bay (including Davis Island, Harbour Island, Hookers Point, and Port Sutton) to the northern shore line of the Alafia River; then east along the northern shoreline of the Alafia River to Turkey Creek; then north along Turkey Creek to Brandon Highway (U.S. 60); then east along Brandon Highway (U.S. 60) (including properties on the south side of Brandon Highway (U.S. 60)) to the James L. Redman Parkway (Highway 39); then north along the James L. Redman Parkway (Highway 39) to West Alexander Street; then west and north along West, South and North Alexander Street to I-4; then east along I-4 to Buchman Highway (Highway 39); then north along Buchman Highway (Highway 39) to the point of beginning.

Done in Washington, DC, this 16th day of June 1997.

Terry L. Medley,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-16195 Filed 6-19-97; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

7 CFR Part 457

Guaranteed Production Plan of Fresh Market Tomato; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulation which was published Thursday, May 1, 1997 (62 FR 23628-23634). The regulation pertains to the Guaranteed Production Plan of Fresh Market Tomato Regulations.

EFFECTIVE DATES: June 20, 1997.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction was intended to provide policy changes to better meet the needs of the insured and include the current Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations with the Common Crop Insurance Policy for ease of use and consistency of terms.

Need for Correction

As published, the final regulation contains errors which may prove misleading. The dates for the end of the insurance period are being corrected to designate October 31, instead of November 20, for California and September 20 in all other states. A November 20 ending date creates an insurance period that is too long in California and significantly increases the risk of loss for FCIC.

Correction of Publication

Accordingly, the publication on May 1, 1997, of the final regulation at 62 FR 23628-23634 is corrected as follows:

PART 457—[CORRECTED]

§ 457.128 [Corrected]

On page 23633, in the second column, in § 457.128, section 10(b)(7) is corrected to read as follows "October 31 of the crop year in California and September 20 in all other states."

On page 23634, in the first column, in § 457.128, section 13(c)(1)(iii)(A) is corrected to read as follows: "With a classification size of 6 x 7 (2⁸/₃₂ inch minimum diameter) or larger and that would grade eighty-five percent (85%) or better U.S. No. 1 for types other than cherry, roma, or plum; or"

Signed in Washington, DC, on June 16, 1997.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 97-16231 Filed 6-19-97; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 735, 736, 737, 738, 739, 740, 741, 742, and 743

RIN 0560-AF07

Amending Regulations for Various Commodity Warehouses

AGENCY: Farm Service Agency.

ACTION: Final rule.

SUMMARY: This final rule updates the various commodity regulations issued under the United States Warehouse Act (USWA) governing cotton, grain, wool, dry beans, nut, sirup, and cottonseed warehouses. The changes contained in this final rule are administrative in nature. Due to the administrative nature of these changes, affected warehouse operators/warehousemen or other sectors of agricultural trade will not be adversely affected.

This final rule also revokes the "Regulations for Field Warehouses" which were originally issued as Service and Regulatory Announcement No. 136 (B.A.E.) July 30, 1932. These regulations have not had any appreciable activity for many years and there is no foreseeable need for them in the future.

This action is being taken as part of the National Performance Review Initiative to eliminate unnecessary regulations and improve those that remain in force.

EFFECTIVE DATE: June 20, 1997.

FOR FURTHER INFORMATION CONTACT: Steve Mikkelsen, Chief, Licensing Authority Branch, Warehouse and Inventory Division, Farm Service Agency, STOP 0553, 1400 Independence Avenue SW., Washington, DC 20250-0553; telephone (202) 720-7433.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Analysis is needed.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V,